

No. 15201

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United States  
Court of Appeals  
for the Ninth Circuit

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RALPH E. WILLIAMS, as Trustee in Bankruptcy of the Estate of George F. Elliff, an individual doing business as Pine Supply Co., bankrupt, and PEARL K. LANNIN,  
Appellants,

vs.

TWIN CITY COMPANY, TWIN CITY LUMBER CO., JOHN W. HUNTER, FRANKLIN SUPPLY CORPORATION, SOUTHWEST MANAGEMENT CORP., H. A. COLLINS and WILLIAM R. RAMSAY, Appellees.

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Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 328, inclusive)

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Appeal from the United States District Court for the  
Northern District of California  
Southern Division

FILED

DEC - 3 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court, Northern  
District of California, Southern Division

No. 34590-Civil

RALPH E. WILLIAMS, as Trustee in Bank-  
ruptcy of the Estate of George F. Elliff, an  
individual doing business as PINE SUPPLY  
CO., Bankrupt, Plaintiff,

vs.

TWIN CITY COMPANY, also known as TWIN  
CITY LUMBER CO., and herein called the  
“OLD FIRM” a firm of copartners, TWIN  
CITY LUMBER CO., herein called the “NEW  
FIRM”, a firm of joint adventurers, JOHN  
W. HUNTER, individually and as a member  
of said “OLD FIRM”, FRANKLIN SUP-  
PLY CORP., a corporation; SOUTHWEST  
MANAGEMENT CORP., a corporation, H. A.  
COLLINS and WILLIAM W. RAMSAY, in-  
dividually, and as members of said “NEW  
FIRM”, AUDREY MAE ELLIFF and  
PEARL K. LANNIN, Defendants.

EXCERPT FROM DOCKET ENTRIES

1955

Apr. 21—Filed complaint and issued summons.

21—Filed answer of Pearl K. Lannin.

21—Filed cross-complaint of Pearl K. Lannin.

\* \* \* \* \*

Aug. 19—Filed answer of defendants to complaint.

1955

Aug. 19—Filed answer of defendants to cross-complaint \* \* \* \* \*

Nov. 21—Court trial.

22—Further trial.

23—Further trial.

28—Further trial.

29—Further trial.

\* \* \* \* \*

Dec. 8—Arguments and submission of case.

\* \* \* \* \*

14—Filed order for judgment vs. plaintiff on counts 1, 2 and 4 and for plaintiff vs. defts. in sum \$4816.62 on counts 3 as amended, and against cross-complainant Lannin on cross-complaint. Counsel for defts. other than Lannin to prepare findings, conclusions and judgment. (Hamlin)

\* \* \* \* \*

1956

Mar. 30—Filed findings and conclusions.

30—Entered judgment—filed March 30, 1956—for plaintiff vs. Twin City Company aka Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., Southwest Management Corp., H. A. Collins and Wm. W. Ramsay each in sum \$4816.62 plus interest from March 30, 1956 and costs; on count 3. Plaintiff to take nothing on 2nd and 4th counts and x-complainant Pearl K. Lannin take nothing vs. defts. except costs. (Hamlin)

\* \* \* \* \*

1956

Apr. 30—Filed notice of appeal by Williams and Lannin.

30—Filed appeal bond in sum \$250.00.

30—Filed appellants' designation of record on appeal. \* \* \* \* \*

June 5—Filed order extending time to lodge record in Court of Appeals to July 10, 1956.  
(Hamlin)

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[Title of District Court and Cause.]

### COMPLAINT

[Plenary suit by trustee in bankruptcy to avoid a fraudulently incurred obligation, to recover money fraudulently paid thereon, to recover money preferentially paid, and to recover damages for fraud.]

Ralph E. Williams, as such trustee in bankruptcy, complains of the defendants above named and avers as follows:

#### First Count

##### I.

On July 10, 1954, in the United States District Court for the Northern District of California, Southern Division, one of the creditors of George F. Elliff, herein called the Bankrupt, filed a petition for the involuntary adjudication of said Elliff and thereby instituted against him a proceeding in bankruptcy numbered "43322" and entitled, "In the Matter of George F. Elliff d.b.a. Pine Supply Co., Alleged Bankrupt", wherein such proceed-

ings were thereupon had that, on or about September 3, 1954, the said Court regularly made, entered, and filed an Adjudication of Bankruptcy by the terms of which it adjudged said George F. Elliff to be a bankrupt under the Act of Congress relating to Bankruptcy, and on or about October 1, 1954, Ralph E. Williams, plaintiff herein, was regularly elected and appointed the trustee in bankruptcy of the estate of said bankrupt, and on or about October 6, 1954, plaintiff's bond as such trustee was duly approved by the order of said Court. Plaintiff has ever since been and is the duly appointed, qualified and acting Trustee in Bankruptcy of the Estate of said bankrupt, and sues herein in his capacity as such Trustee.

## II.

Defendant Twin City Company, herein called the "Old Firm", is and at all times herein mentioned was, a firm of copartners doing business in this Northern District and elsewhere under the latter name, and, until December 31, 1953, under the alternative name of "Twin City Lumber Co.", also. The defendant John W. Hunter, who resides in the Southern District of California, is, and at all times herein mentioned was, a member of said Old Firm. The defendant John W. Hunter is, and has always been, its President and Manager, and together with the defendant William W. Ramsay, who was its agent and employer at all times until the close of business on December 31, 1953, conducted on its behalf all of its dealings with the Bankrupt,

which are hereinafter averred. Until the latter time the business of the Old Firm included the lumber supply business which consisted of supplying lumber, (including lumber products), to wholesalers; but at the latter time the Old Firm transferred the latter business, together with its said alternative name and most of its assets, to the present Twin City Lumber Co., the New Firm mentioned below, which, in consideration of that transfer, thereupon undertook to pay and discharge all of the then existing obligations and liabilities of the Old Firm. The assets so transferred included the guaranteed and secured promissory note which is hereinafter mentioned and which the Old Firm then owned and held; and the New Firm has ever since been and now is the owner and holder of said note.

### III.

Defendant Twin City Lumber Co., herein called the "New Firm", is and ever since December 31, 1953, has been a firm of joint adventurers comprising two corporations, namely, the defendants, Franklin Supply Corp. and Southwest Management Corp., and two individuals, namely, the defendants, H. A. Collins and said William W. Ramsay, both of whom reside in this Northern District, and engaged in conducting the said lumber supply business within this Northern District and elsewhere. Defendant John W. Hunter is and has always been its President and General Manager, and the President, the General Manager and the owner of all or nearly all of the outstanding capital stock



of its corporate member, Franklin Supply Co., and with the assistance of its individual member, the said William W. Ramsay, has conducted on its behalf all of its dealings relating to said promissory note since it acquired the same as aforesaid.

#### IV.

Each of the defendants, Franklin Supply Corp. and Southwest Management Corp., is, and ever since October 1, 1953, or theretofore, has been a corporation duly created, organized, and existing under and by virtue of the laws of a sovereignty as yet unknown to plaintiff and doing business as a corporation in the State of California and within this Northern District.

#### V.

The defendant Audrey Mae Elliff has been joined as a party defendant herein because she has declined to join herein as a party plaintiff.

#### VI.

At all of the times herein mentioned which antedated July 10, 1954, said bankrupt owned a wholesale and retail lumber business known as "Pine Supply Co." and located, as was also its stock in trade, upon certain premises occupied by him in the City of San Jose, County of Santa Clara, State of California. Except during a period of about two months which began on or about August 20, 1953, and ended on or about October 16, 1953, throughout which the latter business was not operated, the Bankrupt operated his said business at all of the



times herein mentioned which antedated the time, about June 20, 1954, when it was finally closed by attachments and finally ceased operation. Throughout its existence, which began later in 1952, the latter business was consistently in a failing condition; that is to say, it consistently and heavily lost money, consistently failed to earn sufficient gross income to enable it to pay its debts as they matured, and continuously accumulated an ever increasing amount of unpaid indebtedness. At all times herein mentioned the Bankrupt was insolvent in every sense of that term, and owed to many creditors debts "provable in bankruptcy," as defined by the Bankruptcy Act, but was, until his adjudication as aforesaid, determined to continue his said business. At all times herein mentioned, the said John W. Hunter and William W. Ramsay were well aware of the said failing condition of the Bankrupt's said business, of the said Bankrupt's insolvency as aforesaid, and of his determination to continue said business.

## VII.

On or about May 4, 1954, the Bankrupt and the Old Firm made and entered into an agreement evidenced by letters and herein called the "May Agreement," by the terms of which they agreed in effect that a field warehouse of a bonded warehouseman be, (as it thereupon was), established on the Bankrupt's said premises; that all existing stock in trade of the Bankrupt and all future acquisitions of stock in trade delivered to him should be, (as they

were), promptly deposited by him in said warehouse; that the Old Firm should, (as it did), open and keep an open account with the Bankrupt upon which he might, (as he did), purchase from time to time from the Old Firm merchandise for use as a part of his stock in trade; that as security for his payment to it of the current balance shown by that open account to be owing by him, warehouse receipts evidencing all of such deposits should be, (as they were), issued to the Old Firm by said warehouseman as such deposits were made; and that either the Old Firm or the Bankrupt might terminate the May Agreement by notice at any time.

### VIII.

On or about August 20, 1953, the Old Firm, in accordance with the May Agreement, notified the Bankrupt that the latter agreement was terminated. The Old Firm then held, but only as security for its said open account, warehouse receipts theretofore issued to it pursuant to that agreement, which evidenced all of his then existing stock in trade, and was consequently in a position to suspend the operation of his business at any time by refusing to release his stock in trade for delivery to his customers. At the latter time also the Old Firm held, (as the Old Firm still does), a number of unpaid checks drawn by him and payable to its order, in the amount of over \$50.00 each, which from time to time during the existence of said business, he had given to it for value, but all of which upon presentation had been denied payment

and returned to it for lack of sufficient funds in the bank accounts on which they were respectively drawn; and all of which, as he then was, to its knowledge aware, it was holding pending such action as it might take or cause to be taken regarding them. The amount of each of these unpaid checks had, upon such refusal of payment thereof, been debited, not upon said open account but upon another, different, and unsecured account which then was, (and still is), kept by the Old Firm, and which is herein called the "bad check account."

## IX.

The Old Firm then claimed, as plaintiff is informed, believes, and so avers, that the Bankrupt was indebted to it in the total sum of about \$42,000.00; of which about \$14,000.00 was the current balance then owed by him upon its said open account, secured as aforesaid, for merchandise sold and delivered to him under the May Agreement; and about \$15,000.00 was the balance owed by him on those unpaid checks according to its bad check account, which was, (as it still is), wholly unsecured; while the remainder was the aggregate amount of a number of other and different claims concerning which the plaintiff is as yet insufficiently informed to aver any more than that they aggregated in amount about \$13,000.00 and were, (as they still are), wholly unsecured. At the latter time, also, as the Old Firm knew, the Bankrupt was and had long been, heavily indebted to numerous other creditors whose claims against him were of a

nature to be provable in bankruptcy as defined by the Bankruptcy Act, and many of whom were threatening him with suit and attachment or with execution; and was, as aforesaid, insolvent, but nevertheless determined to continue his said business if he possibly could.

## X.

Under these circumstances, and upon terminating the May Agreement, as aforesaid, the Old Firm informed the Bankrupt that it would not release any of his stock in trade for delivery to any of his customers or at all unless, nor until, he substantially reduced his indebtedness to it and made some new arrangement satisfactory to itself, and that unless he complied promptly with these requirements, it would proceed by the use of its warehouse receipts (and otherwise to put him out of business completely and permanently). In response to this information the Bankrupt, by several payments, finally, on or about September 20, 1953, discharged and extinguished the current balance owed by him as aforesaid on the said secured open account and thereby brought the latter account to a balance of zero, at which it remained until after the completion of the October Transaction set forth below. The Old Firm, however, continued to hold its said warehouse receipts and to refuse to permit any use by the Bankrupt of his stock in trade, and thereby continued to suspend the operation of his business, until the completion of said October Transaction.



## XI.

On response, also, to the same information, the Bankrupt attempted to formulate and effectuate a new arrangement which would be satisfactory to the Old Firm, but the latter attempt was unsuccessful, until the Old Firm proposed to the Bankrupt and the Bankrupt just prior to October 6, 1953, agreed to the new arrangement which was actually effectuated by the said October Transaction. The latter consisted of the following events, namely: On or about October 6, 1953, and October 8, 1953, two attorneys employed by the Bankrupt drafted, under and in accordance with directions which were then given to them by the Old Firm, the guaranteed note and "Trust Agreement," true copies of which are hereto annexed, marked respectively "Exhibit A" and "Exhibit B," and hereby expressly referred to and made part of this First Count. On or about October 10, 1953, said note was signed by the Bankrupt and the defendant Audrey Mae Elliff, his wife, as co-makers, the endorsement thereon guaranteeing its payment was signed by Mrs. Pearl K. Lannin, the mother of his wife, the said "Trust Agreement" was executed by the Bankrupt as "Trustor," by Louis Pasquinelli, Esq., one of his said attorneys, as "Trustee," and by the said Mrs. Lannin as "Beneficiary," the original of said guaranteed note with a true copy of said "Trust Agreement" were tentatively approved by the defendant Ramsay on behalf of the Old Firm, and delivery of said guaranteed note with an original or true copy of said "Trust Agreement" was made by the Bank-

rupt to the Old Firm. Thereupon the Old Firm surrendered to the Bankrupt all of the said warehouse receipts then held by it; the Bankrupt delivered the same to said warehouseman; and the latter, at the Bankrupt's request, issued, and the Bankrupt delivered to said Mrs. Lannin, new warehouse receipts evidencing all of his then existing stock in trade.

## XII.

By the terms of said note, the Bankrupt and the defendant Audrey Mae Elliff promised to pay to the Old Firm, or its order, the sum of \$28,000.00 plus interest thereon at 6% per annum in four semi-annual installments, commencing with February 1, 1954, or in one lump sum in the event of default. By the terms of said guaranty the said Mrs. Lannin guaranteed payment of said note. Said "Trust Agreement" and all of the transfers on the part of the Bankrupt which were required thereby were intended by the Old Firm, the Bankrupt, and said Mrs. Lannin, not only to indemnify her against liability as such guarantor, but also, by subrogation, to secure the payment of said note and to appropriate exclusively to the purpose of securing such indemnification and said note, all of the then existing stock in trade of the Bankrupt, all stock in trade thereafter acquired by him from whatever source and whether on credit or otherwise, at least twenty per cent of all funds thereafter realized by his said business, and so much more of the latter funds as might be required for the payment of said note. Pursuant to the latter

intent, the said "Trust Agreement" provided by its terms that "primarily" for her protection the Bankrupt should transfer to said Mrs. Lannin herself all of his existing and future stock in trade; should collect and transfer to his said "Trustee" under said "Trust Agreement" any and all funds, including both money and accounts receivable, thereafter realized by him in connection with his said business; and that the latter "Trustee" should in any and all events devote twenty per cent of all such funds so transferred to him exclusively to the payment of said note, unless otherwise instructed by said Mrs. Lannin or her attorney therein named. No such instructions were ever given and all of the provisions just mentioned were at all times fully observed and executed until after July 10, 1954.

### XIII.

The said "Trust Agreement" also provided in effect that the present and future transfers of stock in trade which, as aforesaid, it required the Bankrupt to make to his said guarantor, should be made by the issuance and delivery to her of warehouse receipts under a warehousing arrangement such as would enable the Bankrupt to continue to operate his said business in a normal manner; that he, (not his "Trustee"), should collect the existing and future accounts receivable of his said business; that he (not his "Trustee"), should issue such checks as were issued in payment of the expenses of said business, but should issue such checks against trust funds to be deposited in his checking account for

that purpose by his "Trustee"; and that no notice should be given his debtors of the transfers which said "Trust Agreement" required him to make to his "Trustee" of all of his (future accounts receivable). During the preparation of said "Trust Agreement" it was also, but orally, agreed by the Old Firm and the Bankrupt that no notice whatever be given his creditors of said "Trust Agreement" nor of any of the transfers required thereby, nor of said October Transaction. The purpose of the provisions and oral agreement mentioned in this paragraph was, as both the Old Firm and the Bankrupt well knew, to keep the Bankrupt's then existing and future creditors in ignorance of the latter transaction as completely and for as long a time as possible, lest any of them prevent or avoid by legal action the effects upon them of said October Transaction.

#### XIV.

Neither the said note nor any of the transfers required by said "Trust Agreement" was intended by the Old Firm or the Bankrupt to discharge or secure any antecedent debt of his. No present advance was made to him by anyone in consideration of said October Transaction. The only thing which he or his estate obtained by the latter transaction was the said surrender of warehouse receipts, by means of which and of the required transfer to said Mrs. Lannin of his entire existing stock in trade the latter was, as aforesaid, rendered security for the payment of said note instead of for the



payment of the already extinguished balance on said open account.

### XV.

At all times during and after said October Transaction the Old Firm had knowledge of, and the said Mrs. Lannin had knowledge of, or reason to know all of the premises; and at the time of its acquisition of said note as aforesaid and ever since, the New Firm also has had knowledge of all of the premises.

### XVI.

The execution of said guaranteed note and "Trust Agreement," as aforesaid, were procured as aforesaid by the Old Firm for the purpose and with the intent and effect of thereby hindering, delaying and defrauding the Bankrupt's creditors—not including itself; and the Bankrupt, as the Old Firm knew, executed said note and "Trust Agreement," procured the signature on said note of the defendant Audrey Mae Elliff, and procured the execution of said guaranty and of said Trust Agreement as aforesaid, for the same purpose and with the same intent last mentioned.

### XVII.

Several of those—not including Mrs. Lannin nor any of the defendants herein—to whom the Bankrupt owed such provable debts when said note, guaranty, and "Trust Agreement" were executed, as aforesaid, still owned and held the latter debts on July 10, 1954, and have since proved them in said bankruptcy proceeding.

## XVIII.

Because as aforesaid the said October Transaction added nothing to the Bankrupt's capital, and deprived him of the current use of twenty per cent of the gross earnings of his said failing business, he was thereafter compelled, in order to continue the latter, to finance its operation, as he did, by incurring new debts which he could not and did not pay as they matured, or at all. Many of those new debts were and are "provable in bankruptcy" as defined by said Act and have been proved in said bankruptcy proceeding.

## XIX.

Upon the said note and from funds of the Bankrupt, he has made or caused to be made, (as they were), payments to the New Firm aggregating the total sum of \$5,000.00. Of the latter sum, \$2,500.00 was paid during January of 1954, while the remaining \$2,500.00 was paid on and after April 24, 1954, and prior to July 10, 1954. (Recovery by the Trustee of additional payments made subsequent to the latter date is not waived but is the subject of summary proceedings in the said proceeding in bankruptcy and is therefore not claimed in this plenary suit.)

## XX.

All of the things hereinbefore alleged occurred in the State of California. Plaintiff accordingly says that said note and every one of said payments was and is fraudulent in respect of creditors of said Bankrupt, not only under Section 67d of said Act but also under the laws of said State.

## XXI.

In said bankruptcy proceeding there are now pending and undecided summary proceedings wherein said Mrs. Lannin claims ownership of all of the stock in trade of the bankrupt on hand in said warehouse on July 10, 1954, by virtue of such warehouse receipts issued and delivered to, and now held by her pursuant to said "Trust Agreement," while the plaintiff of such trustee in bankruptcy, claims all of the latter stock in trade as property of said estate upon the ground inter alia that, as above appears, the latter claim of said Mrs. Lannin cannot be sustained, unless the said note is valid and enforceable, and that by reason of the premises averred in this First Count, said note was and is, as aforesaid, fraudulent and void. The invalidity, however, of the said note cannot with finality be determined in said summary proceedings because the New Firm, which owns and holds said note, is not, and, as the Court by its order therein has regularly determined, cannot be made a party to the latter proceedings.

## XXII.

Because, as aforesaid, the latter claim of said Mrs. Pearl K. Lannin would be vitally affected by a judgment herein declaring said note to be as contended by plaintiff, fraudulent and void; plaintiff believes and says that she is not only a proper but a necessary party to this suit, and she has therefore been joined as a party defendant herein.

## Second Count

## I.

Each and all of the averments made in Paragraphs I to V, both inclusive, of the foregoing First Count are true and are hereby expressly referred to, reiterated and made part of this Second Count.

## II.

Within four months next preceding July 10, 1954, the Bankrupt made or caused to be made, as they were, the following payments of money to the New Firm from the funds of the Bankrupt; namely, on April 24, 1954, \$700.00; on May 5, 1954, \$300.00, and on June 16, 1954, \$1,500.00; or in all \$2,500.00.

## III.

All of said payments were made on account of an antecedent obligation; namely, the promissory note which is mentioned in Paragraph II of said First Count, and a true copy of which, marked "Exhibit A," is hereto annexed and hereby expressly referred to and made part hereof.

## IV.

When said payments were made, the Bankrupt was insolvent, as the New Firm then knew or had probable cause to know; and as it also knew or should have known, the effect of each and all of said payments was to enable it to obtain a greater percentage of its debt than several other creditors to whom, or to which, the Bankrupt then owed debts of the same class.

## Third Count

## I.

Each and all of the averments contained in Paragraphs I, III, IV, and V of the foregoing First Count are true and are hereby expressly referred to, reiterated, and made part of this Third Count.

## II.

Within four months next preceding July 10, 1954, the Bankrupt made or caused to be made, as they were, to the New Firm, the following payments of money from the funds of the Bankrupt; namely, on or shortly after March 25, 1954, \$3,170.37; and on or shortly after March 25, 1954, \$446.25; or a total of \$3,616.62.

## III.

Both of said payments were made on account of an antecedent obligation; namely, a debt which, in November of 1953, the Bankrupt incurred to Twin City Company, a co-partnership, for merchandise sold and delivered in the latter month, and which, on January 1, 1954, said co-partnership had transferred to the New Firm.

## IV.

When said payments were made, the Bankrupt was insolvent, as the New Firm then knew or had probable cause to know; and as it also knew or should have known, the effect of each and all of said payments was to enable it to obtain a greater percentage of its debt than several other creditors to whom, or to which, the Bankrupt then owed debts of the same class.



## Fourth Count

## I.

Each and all of the averments contained in Paragraphs I to XX, both inclusive, of the foregoing First Count are true, are hereby reiterated, and together with the annexed Exhibits A and B, therein mentioned, are hereby expressly referred to and made part of this Fourth Count.

## II.

When, as aforesaid, the Old Firm proposed the new arrangement effected by the October Transaction, including the securing of said note indirectly by said Trust Agreement and by the transfers which the latter required, the Bankrupt, as the Old Firm well knew, agreed to that proposal only because the Old Firm's actual control over his entire existing stock in trade and its possession of said unpaid checks enabled it at its pleasure to destroy his business and virtually ruin him so that he was, and realized he was, almost completely under its domination and control. It then was, however plainly apparent to the Old Firm that because of his insolvency, any transaction which effectuated that arrangement and each of the subsequent transfers of his assets and earnings which that arrangement would require of him (if he continued his business as he was to its knowledge determined to do) would necessarily involve his committing an act or several acts of bankruptcy and render increasingly probable the institution of a successful proceeding in bankruptcy by several of his increasingly numerous

creditors for his involuntary adjudication. It then was equally apparent, also, that for his or her own protection the guarantor of his note would in any such proceeding be virtually forced to claim all of his stock in trade as against any receiver appointed therein and against his trustee in bankruptcy, and that heavy expense to his estate would be involved in investigating the merits of such claim, in discovering the fraud involved in that new arrangement, in opposing such claim, and in determining the rights of the trustee.

### III.

In the bankruptcy proceeding actually instituted, as alleged in Paragraph I of said First Count, a receiver was duly appointed and duly qualified as such for the purpose of safeguarding said estate against any sequestration or diversion of the Bankrupt's assets under said note and "Trust Agreement" and of investigating the fraud apparently involved in said October Transaction and of reducing to the receiver's possession the assets transferred thereunder. In the latter proceeding also the receiver first and then the present trustee has been for several months engaged in summary proceedings for the determination of the merits of the claim which said Mrs. Lannin has actually propounded therein as the transferee of the entire stock in trade of the Bankrupt, as well as in such investigation of said fraud both under Section 21a of the Bankruptcy Act and otherwise; and to these activities have necessarily devoted much of the at-

tention, time, and labor of their counsel in said bankruptcy proceeding and necessarily have employed also the services of a certified public accountant for the examination of financial records relevant to said fraud, and necessarily have instituted ancillary proceedings in the United States District Court for the Southern District of California for the examination there of witnesses resident and records located in the latter District relative to said fraud, all with the approval and under the authority of this Court in said bankruptcy proceeding; and necessarily have incurred thereby heavy expense to the said estate which has certainly amounted to more than \$1,000.00, and the full amount of which cannot be ascertained with certainty at this time but will probably approximate \$2,000.00.

#### IV.

The defendant, John W. Hunter, as plaintiff avers upon information and belief, is the individual who, as a member and the president and manager of the Old Firm and the president and manager of the New Firm, conceived, devised, proposed, and procured as aforesaid, the commission of said fraud by the bankrupt and the said payments to the New Firm upon his said fraudulently executed note.

Wherefore, plaintiff prays judgment as follows:

(i) That said note be declared fraudulent and void, both as against the trustee in bankruptcy and for all purposes; and that it be ordered delivered up and cancelled;



(ii) That as against the said New Firm, and each and all of the defendants, Franklin Supply Corp., a corporation, Southwest Management Corp., a corporation, H. A. Collins and William W. Ramsay, as members thereof, plaintiff recover a money judgment on his foregoing First Count, in the sum of \$5,000.00, plus legal interest, or alternatively, and if such recovery be denied, a money judgment on his foregoing Second Count in the sum of \$2,500.00 plus interest;

(iii) That as against the said New Firm, and each and all of the defendant members thereof, plaintiff recover also a money judgment on his foregoing Third Count, in the further sum of \$3,616.62;

(iv) That on his foregoing Fourth Count the plaintiff recover also a money judgment against each and all of the defendants except the defendant, Audrey Mae Elliff, for actual damages in the sum of \$2,000.00 and against the said Old Firm and the defendant, John W. Hunter, and each of them, for penal damages in the additional sum of \$5,600.00; and

(v) That plaintiff recover also his costs herein, and such other, further and different relief as the Court may deem proper.

/s/ C. HUNTINGTON JACOBS,  
Attorney for Plaintiff.

EXHIBIT A  
INSTALLMENT NOTE

(Interest Separate)

\$28,000.00    San Jose, California    October 6, 1953

In installments, and at the times hereinafter stated, for value received, We, George F. Elliff and Audrey Mae Elliff, his wife, promise to pay to Twin City Company, doing business as Twin City Lumber Company, 1100 South Beverly Drive, Los Angeles, California, the principal sum of Twenty-Eight Thousand (\$28,000.00) Dollars with interest from date hereof on deferred payments until paid at the rate of six (6%) per cent per annum, payable as hereinafter set forth. Said principal sum payable in four (4) installments as follows:

Ten thousand, seven hundred (\$10,700.00) Dollars on February 1, 1954;

Four thousand, two hundred (\$4,200.00) Dollars on August 1, 1954, plus interest;

Six thousand (\$6,000.00) Dollars on February 1, 1955, plus interest; and,

Seven thousand, one hundred (\$7,100.00) Dollars on August 1, 1955, plus interest.

And we, agree that in case of default in the payment of any said installments, such unpaid installments shall bear interest from the date of their respective maturity until paid at the rate of six (6%) per cent per annum, and that if any one of said installments or interest due hereon is not paid within thirty (30) days after the same becomes due and payable, the whole of the principal sum then re-

maining unpaid, together with the interest that shall have accrued thereon, shall forthwith become due and payable at the election of the holder of this note, without notice. Principal and interest payable in lawful money of the United States.

George F. Elliff

Audrey Mae Elliff (his wife)

I guarantee payment of the foregoing obligation.

Pearl K. Lannin,

Mrs. John (Pearl K.) Lannin,

a widow

M. Henry Robidoux,

Witness to Mrs. Lannin's

signature

## EXHIBIT B

### TRUST AGREEMENT

This Agreement made and entered into this 8th day of October, 1953, by and between George F. Elliff, hereinafter referred to as Trustor, Louis Pasquinelli, Attorney at Law, hereinafter referred to as Trustee, and Pearl K. Lannin, hereinafter referred to as Beneficiary.

#### Witnesseth:

Whereas, the Trustor, doing business under the name and style of Pine Supply Company is indebted to the Twin City Company, doing business as Twin City Lumber Company, in the sum of Twenty Eight Thousand (\$28,000.00) Dollars and as the result thereof, Trustor and his wife have executed an installment promissory note to the Twin City

Company, doing business as Twin City Lumber Company, in the said sum of Twenty Eight Thousand (\$28,000.00) Dollars; and

Whereas, Pearl K. Lannin, also known as Mrs. John Lannin, (Beneficiary herein named) has signed the said promissory note as a guarantor and it is the desire of all parties to this agreement that this Trust Agreement be carried out primarily for the purpose of protecting the said Pearl K. Lannin, and to hold her harmless or indemnify her as guarantor in the said promissory note; now, therefore:

It is agreed by and between these parties as follows:

That the Trustor does hereby agree to transfer, set over, assign and convey unto the Beneficiary all of the stock-in-trade (being primarily rough and finished lumber) located at the place of business of Trustor at 1565 Almaden Avenue, San Jose, California, which said stock-in-trade shall be handled on a bonded warehousing agreement with a legitimate and qualified bonded warehouseman. That none of the said stock-in-trade or any and all stock-in-trade hereafter purchased in connection with Trustor's business shall be released to the Trustor, or anyone else, except upon the authorization of the Beneficiary, and in her absence, her Attorney, Henry Robidoux. That in such warehousing arrangement, the said warehouseman shall act as the agent of the Beneficiary. That in this regard, it is agreed that the warehousing transaction will be set up in such a way as to afford the Beneficiary the desired protection, but at the same time, enable the Trustor to

conduct his business in the usual manner.

That it is agreed that this warehousing arrangement shall not cover only the present inventory in the approximate amount of Twenty Four Thousand Four Hundred Ninety Two (\$24,492.00) Dollars, but all that stock-in-trade hereafter purchased by the Trustor in connection with the said business is, likewise, to be placed under the same warehousing arrangement.

That the Trustor agrees to collect all Accounts Receivable, as well as any and all other monies which may be due to him in connection with his business and to turn the same over to the Trustee as the said monies are collected. It is acknowledged in this regard, that at the present time, the Trustor has approximately Seventeen Thousand (\$17,000.00) Dollars in Accounts Receivable.

That as the stock-in-trade and/or any portion thereof is sold by the Trustor, he shall turn over to the Trustee therefor either the cash realized from the sale thereof, or the Accounts Receivable resulting from said sale, which said cash and/or Accounts Receivable shall be the property of the Beneficiary and be retained in the trust herein created.

That the Trustee shall deposit any and all monies received by him by the Trustor in the Anglo California National Bank, San Jose, California, in an account entitled Louis Pasquinelli, Trustee for Pearl K. Lannin, and that no monies shall be withdrawn by the said Trustee from the said account except in the performance of the terms of this Trust Agreement.



That the Trustee shall be authorized to disburse to the Trustor such sums as may accrue for salaries for employees in connection with Trustor's business, said salaries to be confirmed by the Trustor before payment thereof shall be made.

That it is agreed that the Trustor shall be allowed a monthly salary of Four Hundred (\$400.00) Dollars per month, plus actual costs of fuel used in connection with the operation of his automobile in the business.

That all accountant fees, trustee fees and attorney's fees shall be paid by the Trustee in the course of the administration of the said trust upon vouchers properly authenticated by the Trustor.

That the Trustee shall be authorized to make payments from trust funds to creditors of the Trustor in the usual course of business upon presentation of properly authenticated vouchers.

That from funds received by the Trustee there shall be set aside and ear-marked, twenty (20%) per cent of all such funds, the purpose being to accumulate, if possible, sufficient monies with which to meet the payments to become due upon the said promissory note. That at no time, and under no circumstances, except with the written consent of the Beneficiary, or in her absence, M. Henry Robidoux, her attorney, shall the funds in the hands of the Trustee be reduced below the said twenty (20%) per cent.

That the Trustor shall be permitted to have a Petty Cash account not to exceed One Hundred

(\$100.00) Dollars and upon depletion thereof, the said Petty Cash account shall be replenished by the Trustee upon receipt of a proper accounting from the Trustor.

That the Trustee shall be furnished with a weekly record of all sales and business transacted by the Trustor.

That in order to alleviate as much as possible the manual work involved in the administration of this trust, it is agreed that the Trustor and/or his accountant shall submit to the Trustee the proper invoices and vouchers, along with checks drawn by the Trustor in payment thereof—the said checks to be drawn upon the Trustor's personal account—and in order to forestall the possibility of attachment or other levy upon the said account, the said checks to be certified—and in turn, the said Trustee shall deposit from the Trust Account into the account of the Trustor sufficient monies to honor the said checks, and the Trustee shall thereupon mail the checks to the persons entitled thereto.

That it is specifically understood and agreed that the Trustee shall not be liable—nor does he assume any liability—in connection with the administration of this trust other than such as may result from his breach of the same.

That at any time that the said Beneficiary shall be relieved of her obligation on the said promissory note, then the trust herein created shall thereupon terminate and this agreement shall no longer be of any force and effect, and all property held by the



Trustee at such time shall be returned to the Trustor.

That at any and all reasonable time either the Trustor or the Beneficiary shall have the right to require an audit of the Trustee's Account in the administration of his trust.

That all future accounts receivable shall be turned over to the trustee as hereinbefore provided, but that the debtors thereon shall not be notified of such assignment because of business reasons, and in this connection, the Trustee shall not be liable for any losses which may result from failure of notice to the debtors.

That the Trustee does hereby accept this trust and agrees to carry out the terms thereof as herein specified.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first hereinabove written.

George F. Elliff,

Trustor

Louis Pasquinelli,

Trustee

Pearl K. Lannin,

Beneficiary

Duly Verified.

[Endorsed]: Filed April 21, 1955.

[Title of District Court and Cause.]

ANSWER OF PEARL K. LANNIN

Defendant, Pearl K. Lannin, answers the Complaint of Plaintiff herein filed as follows, to-wit:

This Defendant alleges that she did not know the actual financial condition of George F. Elliff, Bankrupt described in the Complaint filed herein, nor of his business until long after she guaranteed his note, described in said Complaint, and signed the "Trust Agreement" mentioned therein, and that she supposed his note was being given in payment for merchandise.

Wherefore, Defendant, Pearl K. Lannin, prays that plaintiff take nothing from defendant, Pearl K. Lannin.

/s/ ROBERT N. JACOBS,  
Attorney for Defendant, Pearl  
K. Lannin

Duly Verified.

[Endorsed]: Filed April 21, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 34590

RALPH E. WILLIAMS, as Trustee in Bankruptcy, etc.,  
Plaintiff,  
vs.

TWIN CITY LUMBER COMPANY, etc., et al.,  
Defendants.

PEARL K. LANNIN,  
Defendant and Cross-Complainant,  
vs.

TWIN CITY COMPANY, also known as TWIN CITY LUMBER CO., and herein called the "OLD FIRM", a firm of copartners, TWIN CITY LUMBER CO., herein called the "NEW FIRM", a firm of joint adventurers, JOHN W. HUNTER, individually and as a member of said "OLD FIRM", and FRANKLIN SUPPLY CORP., a corporation, SOUTHWEST MANAGEMENT CORP., a corporation, H. A. COLLINS and WILLIAM W. RAMSAY, individually, and as members of said "NEW FIRM", Cross-Defendants.

#### CROSS-COMPLAINT OF PEARL K. LANNIN

Contemporaneously with the filing herein of her Answer to the Complaint of Plaintiff herein filed, the defendant Pearl K. Lannin, pursuant to Rule 13g. of the Federal Rules of Civil Procedure, makes and files herein her Cross-Complaint against her co-

parties, the cross-defendants above named, as such, and complaining of said cross-defendants, alleges as follows:

### I.

Except as hereinafter alleged, each and all of the averments contained in the First Count of said Complaint are true, and subject only to that exception, are hereby adopted and reiterated by this Cross-Complainant and together with the two exhibits annexed to said Complaint and mentioned in Paragraph XI of said First Count, are hereby expressly referred to and made part of this Cross-Complaint as though set forth in haec verba.

### II.

When, as alleged in those paragraphs, the Old Firm proposed the new arrangement effected as therein alleged, by the October Transaction mentioned therein, George F. Elliff therein and herein called the Bankrupt, was, as the Old Firm was well aware, completely under its domination because of the facts, therein alleged, that it still retained warehouse receipts representing all of his stock in trade and was still refusing to release any of said stock in trade for delivery to his customers, and that it still retained also, as it still does, the unpaid checks therein mentioned; and, as this cross-complainant believes and so avers, everything hereinafter alleged to have been done or omitted by the Bankrupt was done at the instance and direction of the Old Firm and in furtherance of its design to effectuate that proposed new arrangement.

## III.

On or about September 28, 1953, the Bankrupt requested this cross-complainant to endorse as guarantor a note for \$28,000.00 which he proposed to execute, together with his wife, daughter of this cross-complainant, to the order of the Old Firm. In support of that request he falsely and fraudulently represented to this cross-complainant that said note was to be given in payment for new merchandise which his business urgently required and by the resale of which he could and would quickly pay said note and reap a handsome profit which would enable him to expand his business and ensure it a brilliant success; and that his business already was profitable and flourishing, although in need of the additional financing which such profit would supply. In support of that request he also offered to secure this cross-complainant against any possible liability on the requested guaranty by transferring to her his entire stock in trade and all subsequent replacements thereof or additions thereto, and also by impounding for her benefit and under a trust arrangement all of the future proceeds of his present accounts receivable and all other money which his business might realize until any possibility of such liability was extinguished; and he falsely and fraudulently represented to her that such security would fully protect her. This plaintiff believed those representations and relied thereon in executing the guaranty and "Trust Agreement" mentioned in said First and Fourth Counts. As he was well aware, she did not know or suspect when



she did so and the Bankrupt fraudulently omitted to disclose to her, that he was insolvent or otherwise than in a healthy financial condition, nor that he then had or would thereafter acquire, necessarily or otherwise, any creditors who would be hindered, delayed, defrauded, or harmed at all much less that he would be placed in any danger of being adjudicated a bankrupt, by the execution or guaranteeing of that note or the execution of that "Trust Agreement" or by any of the transfers for which that "Trust Agreement" provided, because, as he knew, she only vaguely understood the terms or purport of said note and "Trust Agreement" and supposed that any creditors of said business could and would be paid by him promptly and in full, and because he fraudulently omitted to give her any information to the contrary. Had it not been for the premises in this paragraph alleged, this plaintiff, as the Old Firm well knew or ought to have known, would not have executed any such guaranty or "Trust Agreement" or participated in the said October Transaction at all or accepted any, or the benefit of any, of the said transfers. But this cross-complainant's first knowledge and understanding of the actual facts regarding these matters was obtained by her during the proceeding in involuntary bankruptcy which is mentioned in Paragraph I of the said Complaint of the trustee, and she first realized the fraudulent character of said note, guaranty, "Trust Agreement" and transfers after she had propounded in said bankruptcy proceeding her claim to the stock in trade so transferred to her.

## IV.

Prior to any such discovery by this cross-complainant, and upon the demand of the New Firm, she made to the New Firm two payments of \$1,000.00 each or \$2,000.00 in all on account of said guaranty; that is to say,

a payment of \$1,000.00 on or about August 26, 1954, and — a payment of \$1,000.00 on or about September 16, 1954; all to her damage in the sum of \$2,000.00. When it acquired said guaranteed note, and when it demanded and received said payments from this cross-complainant the New Firm was well aware of all of the premises.

## V.

When it proposed said new arrangement as afore-said and participated in said October Transaction as alleged by the Trustee in said Paragraph XI of his said First Count, the Old Firm well knew or ought to have known that such a transaction and the obligations assumed and transfers required thereby were likely, if not almost certain to result in the institution, within a year after completion of said transaction, of a proceeding in bankruptcy for the involuntary adjudication as a bankrupt of said George F. Elliff; and in his adjudication as such notwithstanding all the secrecy in which such transaction and transfers might be enshrouded; and that in any such bankruptcy proceeding the guarantor of such note would be virtually compelled and virtually certain to assert her supposed rights under said "Trust Agreement", and would almost cer-



tainly be subjected to heavy expense in attempting to maintain and establish the same against any receiver and against the trustee appointed in such proceeding.

## VI.

In the involuntary proceeding mentioned in said Paragraph I of the said First Count of the trustee's complaint herein, a receiver was appointed and qualified on or about September 9, 1954, and thereupon procured in the latter proceeding an order requiring this cross-complainant to show cause inter alia why any assets of the Bankrupt under her control should not be administered upon as a part of his estate. In response to that order this cross-complainant thereupon filed in the latter proceeding an answer whereby she claimed ownership of all of the stock in trade of the Bankrupt under the warehouse receipts issued and delivered to and held by her pursuant to said "Trust Agreement". The Summary proceedings thus initiated to determine her rights to said stock in trade consumed several months, and together with the investigation required for the preparation and presentation of the facts involved therein, necessarily have already subjected her to an expense of \$1,000.00 for the services of counsel whom she necessarily retained for that purpose. Her said claim has now been submitted and is awaiting decision; which must, apparently, be adverse to her because of the uncontradicted evidence which was adduced upon the trial of the latter claim that said note and all of said October Transaction was in fact fraudulent. She will

ask leave to supplement this present cross-complaint by reporting said decision when the latter is rendered.

## VII.

By reason of the premises this cross-complainant has already suffered actual damage in the sum of at least \$3,000.00.

Wherefore, this cross-complainant prays:

(1) That the said note and guaranty be declared fraudulent and void; and ordered delivered up and cancelled;

(2) That this cross-complainant have judgment against each and all of the cross-defendants above named for actual damage in the sum of \$3,000.00 and for penal damages in the further sum of \$9,000.00; or the total sum of \$12,000.00;

(3) That this cross-complainant recover from the latter cross-defendants her costs incident to this cross-complaint; and,

(4) That this cross-complainant have such other, further and different relief as the court may deem proper.

/s/ ROBERT N. JACOBS,  
Attorney for Defendant and  
Cross-Complainant

Duly Verified.

[Endorsed]: Filed April 21, 1955.

[Title of District Court and Cause.]

## ANSWER TO COMPLAINT

Come now Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation, Southwest Management Corp., a corporation, H. A. Collins, and William W. Ramsay, Defendants above-named, and answer as follows the Complaint of Plaintiff herein filed.

### I.

Admit the allegations contained in paragraphs numbered I, II, III and IV in said Complaint set forth, except that Defendants deny the allegation contained in paragraph II that Defendant John W. Hunter is and always has been President of the "Old Firm".

### II.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, each and every, all and singular, the allegations contained in paragraphs numbered V and VI in said Complaint set forth; and specifically deny that Defendants John W. Hunter and/or William W. Ramsay at all of the times herein mentioned were well aware or at all aware of the alleged failing condition of the Bankrupt's said business, or of the said Bankrupt's insolvency and/or of his determination to continue said business.

### III.

Admit the allegations of paragraph VII of said Complaint, saving and excepting that these Defend-

ants deny that the "May Agreement" referred to therein was made and entered into on or about May 4, 1954, and in that connection they allege that said Agreement was made on or about April 27, 1953, and that substantially all of the stock-in-trade deposited in the field warehouse referred to therein was stock-in-trade theretofore delivered into said warehouse by said "Old Firm" and theretofore bought and paid for by said "Old Firm" and then belonged to said "Old Firm", and was subject to release from said warehouse to said Bankrupt upon his payment therefor; and that the contents of said warehouse was security for said "Old Firm" on obligations of said Bankrupt to said "Old Firm" arising out of the purchase of stock-in-trade by said Bankrupt by said "Old Firm".

#### IV.

Deny each and every, all and singular, the allegations contained in paragraphs numbered VIII, IX, and X.

#### V.

Deny each and every, all and singular, the allegations contained in paragraph numbered XI in said Complaint contained, saving and excepting that these Defendants admit the allegations in paragraph XI commencing with the words "on or about" on line 27, page 7, of said Complaint and ending on line 30, page 7, with the words "his wife", thereof and those allegations contained in paragraph XII of said Complaint commencing on line 12, page 8 and ending with the word "note" on line 18, page 8;

and these Defendants deny, for lack of information or belief sufficient to enable them to answer in that regard, each and every, all and singular, the other allegations contained in paragraph XII.

## VI.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, except as may be disclosed by Exhibit "B" annexed to said Complaint, each and every, all and singular, the allegations contained in paragraph XIII in said Complaint contained.

## VII.

Deny each and every, all and singular, the allegations contained in paragraphs XIV, XV, and XVI in said Complaint contained and in this connection they allege that at none of the dates mentioned in said Complaint was the open account therein referred to owing by said Bankrupt to said "Old Firm" extinguished.

## VIII.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, each and every, all and singular the allegations contained in paragraphs numbered XVIII, XIX, XX, XXI and XXII thereof, saving and excepting that these Defendants admit that such of the things alleged in said Complaint prior to said paragraph XX which did occur pursuant to the admissions of these Defendants heretofore contained herein did so occur in the State of California.



## Second Count

## I.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, each and every, all and singular the allegations contained in paragraphs II in said Complaint set forth.

## II.

Deny each and every, all and singular, the allegations contained in paragraph IV in said Complaint contained.

## Third Count

## I.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, the allegations contained in paragraphs II and III of said Complaint contained.

## II.

Deny each and every, all and singular, the allegations contained in paragraph IV thereof.

## Fourth Count

## I.

Admit and/or deny with respect to paragraphs I to XX, both inclusive, of Plaintiff's First Count which are by reference made part of paragraph I of his said Fourth Count which have heretofore been admitted and/or denied in connection with said First Count.



II.

Deny each and every, all and singular, the allegations contained in paragraphs numbered II in said Complaint contained.

III.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, the allegations contained in paragraphs numbered III of said Complaint, saving and excepting that these Defendants admit the appointment and qualification of a Receiver in said bankruptcy proceedings.

IV.

Deny each and every, all and singular, the allegations contained in paragraph IV in said Complaint contained.

Wherefore, Defendants pray that Plaintiff take nothing herein and that these Defendants have judgment for their costs herein incurred; and for all proper relief.

SHAPRO & ROTHSCILD

/s/ By DANIEL ARONSON, JR.

Attorneys for Defendants

Affidavit of Service by Mail Attached.

[Endorsed]: Filed August 19, 1955.

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[Title of District Court and Cause.]

ANSWER TO CROSS-COMPLAINT

Come now the Cross-defendants above-named and

answer as follows the Cross-Complaint of Pearl K. Lannin heretofore filed herein.

## I.

Allege that said Cross-complaint does not state facts sufficient to constitute a cause of cross-claim, or cause of action against these Cross-defendants, or any of them.

## II.

Alleges that prior to the commencement of the above-entitled proceeding and/or the filing of the said cross-complaint Cross-defendant Twin City Lumber Co., commenced in the Superior Court of the State of California, in and for the County of Santa Clara, an action therein pending and numbered 93552 and wherein Pearl K. Lannin, Cross-complainant herein was a Defendant, and in which said action Cross-defendant Twin City Lumber Co., seeks judgment against said cross-complainant upon the Promissory Note more particularly in said cross-complaint referred to; and that Summons upon said Complaint in said Superior Court action No. 93552 was duly issued by the Clerk of said Superior Court and by said Cross-defendant Twin City Lumber Co., caused to be served upon said Cross-complainant, and thereby said Superior Court acquired jurisdiction over the subject matter of said Complaint and of said Cross-complaint with respect to the said Promissory Note, prior to the said commencement of the above-entitled action and/or the said filing herein of said cross-complaint; and that, therefore, the above-entitled Court has no jurisdic-

tion over the subject matter of said Cross-complaint herein.

### III.

Admit and/or deny with respect to the First Count of Plaintiff's Complaint in said action which are by reference made part of paragraph I of said Cross-complaint which have heretofore been admitted and/or denied in connection with said First Count of said Plaintiff's Complaint.

### IV.

Deny each and every, all and singular, the allegations contained in paragraphs numbered II and VII of said Cross-complaint.

### V.

Deny for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, each and every, all and singular, the allegations contained in paragraphs numbered III and IV of said Cross-complaint.

### VI.

Deny each and every, all and singular, the allegations contained in paragraph numbered V of said Cross-complaint.

### VII.

Deny, for lack of information or belief sufficient to enable these Defendants otherwise to answer in that regard, the allegations contained in paragraph VI of said Cross-complaint, saving and excepting that these Defendants admit the appointment and qualification of a Receiver in the bankruptcy pro-

ceedings therein referred to and the issuance of the Order to Show Cause and of the filing therein of the Answer thereto; and in that connection, these Defendants allege that they are not a party to and were not represented in and therefore are not and will not be bound by any decision which might be made by said Bankruptcy Court on the issues so joined by the Trustee and Cross-complainant herein and more particularly referred to as summary proceedings in said paragraph VI of said Cross-complaint.

Wherefore, these Cross-defendants pray that Cross-complainant take nothing herein and that these Cross-defendants be hence dismissed with their costs herein incurred; and that if the foregoing relief is not granted herein that these Cross-defendants will have a trial upon the merits of the issues joined upon said Cross-complaint by this Answer be had herein and that it be adjudged and decreed by this Court that the Promissory Note and Guaranty more particularly in said Cross-complaint described be declared valid and subsisting and between said Cross-complainant and these cross-defendants; and for such other, further and different Order, Judgment, Decree and relief as to this Honorable Court may seem proper in the premises.

SHAPRO & ROTHSCHILD

/s/ By DANIEL ARONSON, JR.

Attorneys for Cross-defendants

[Endorsed]: Filed August 19, 1955.

[Title of District Court and Cause.]

## AMENDMENT TO COMPLAINT

By leave of Court first had and obtained the plaintiff above named hereby amends his Complaint herein as follows, to-wit:

First, by amending Paragraph II of the Third Count of said Complaint to read as follows:

### “II.

“Within four months next preceding July 10, 1954, the Bankrupt made or caused to be, as they were, made, to the New Firm, the following payments of money from the funds of the Bankrupt; namely,

On or shortly after March 25, 1954. . . . \$3,170.37

On or shortly after March 25, 1954. . . . 446.25

On or about May 7, 1954. . . . . 1,200.00

or a total of. . . . . \$4,816.62”;

Second, by amending paragraph (iii) of the prayer of said Complaint by substituting the sum of \$4,816.62 for the sum of \$3,616.62 which now appears in the latter paragraph.

Wherefore, plaintiff prays judgment in accordance with the prayer of said Complaint as so amended.

/s/ C. HUNTINGTON JACOBS  
Attorney for Plaintiff



State of California,  
County of Santa Clara—ss.

Ralph E. Williams, being first duly sworn, says on oath as follows:

I am the duly appointed, qualified and acting Trustee in Bankruptcy of the Estate of George F. Elliff, bankrupt, and as such make this verification of the foregoing Amendment to Complaint. I have read said Amendment and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

/s/ RALPH E. WILLIAMS

Subscribed and sworn to before me this 18th day of November, 1955.

[Seal]      /s/ HELEN IVANCOVICH  
Notary Public in and for the County  
of Santa Clara, State of California

[Endorsed]: Filed November 21, 1955.

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[Title of District Court and Cause.]

### ORDER

It is hereby ordered that judgment be entered against plaintiff on counts One, Two and Four of the complaint; in favor of the plaintiff on count Three of the complaint, as amended, in the sum of \$4,816.62; and against cross-complainant Lannin on the cross-complaint.

Counsel for defendants other than Lannin and



Elliff to prepare findings of fact, conclusions of law, and judgment.

Dated: December 14, 1955.

/s/ O. D. HAMLIN

United States District Judge

[Endorsed]: Filed Dec. 14, 1955.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action upon the Complaint of Plaintiff and the Answer thereto heretofore filed herein by Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins, and William W. Ramsay, and upon the Answer thereto and the Cross-Complaint of Defendant and Cross-Complainant, Pearl K. Lannin, and the Answer to said Cross-Complaint heretofore filed herein by the Cross-Defendants above-named, and upon the issues so joined, having regularly come on for hearing before the above-entitled Court for trial, said Court sitting without a jury, a trial by jury of said issues having been expressly waived, commencing on the 21st day of November, 1955, said Plaintiff being represented by C. Huntington Jacobs, Esq., his attorney, the Defendants and Cross-Defendants Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp.,

a corporation; H. A. Collins, and William W. Ram-say being represented by Messrs. Shapro & Rothschild (Arthur P. Shapro, Esq., and Daniel Aronson, Jr., Esq., appearing), their attorneys, and Defendant and Cross-Complainant, Pearl K. Lannin being represented by Robert N. Jacobs, Esq., her attorney, and no appearance having been made by or on behalf of Defendant Audrey Mae Elliff, and evidence, both oral and documentary, having been adduced by the respective parties upon the issues so joined, and the matters having been duly argued by counsel for the respective parties and submitted to the Court for decision, and the Court being fully advised in the premises, now makes the following

Findings of Fact  
(First Count)

I.

That each and all of the allegations contained in paragraphs numbered I, II, III, IV and V of the First Count of Plaintiff's Complaint on file herein are true.

II.

That it is true that at all of the times mentioned in said First Count of said Complaint which antedated July 10, 1954 said Bankrupt owned a wholesale and retail lumber business known as "Pine Supply Co.", and located, as was also its stock-in-trade, upon certain premises occupied by him in the city of San Jose, County of Santa Clara, State of California; and that the Bankrupt operated his said business at all of the times herein mentioned

which antedated the time, about June 20, 1954, when it was finally closed by attachments and finally ceased operation; and that said Bankrupt, until his adjudication as such as aforesaid, was determined to and did continue his said business as aforesaid, and the said John W. Hunter and William W. Ramsay were well aware of said Bankrupt's said determination to continue his said business; and that except as herein in this paragraph above found to be true, each and all of the allegations of paragraph VI of the First Count of Plaintiff's said Complaint on file herein are untrue.

### III.

That each and all of the allegations contained in paragraph VII of the Plaintiff's First Count of said Complaint are true, saving and excepting that the "May Agreement" in said paragraph VII referred to provided that warehouse receipts evidencing all such deposits should be (as they were) issued to the old firm by said warehouseman as security for all of the indebtedness of said Bankrupt which then and/or thereafter, during the term of said "May Agreement," were or to become owing to said old firm by said Bankrupt.

### IV.

That on or about August 20, 1953, the old firm, in accordance with the May Agreement, notified the Bankrupt that the latter agreement was terminated; and that the old firm then held as security for all of the monies then owed to it by said Bankrupt

warehouse receipts theretofore issued to it pursuant to that Agreement, which evidenced substantially all of his then existing stock-in-trade, and was consequently in a position to suspend the operation of said Bankrupt's business at any time by refusing to release the stock-in-trade covered by said warehouse receipts for delivery to his customers; and that at the later time also, the old firm held (as the old firm did at the time of the trial of the above-entitled action) a number of unpaid checks drawn by him and payable to its order in the amount of over \$50.00 each, which from time to time during the existence of said business he had given to it for value, but all of which upon presentation had been denied payment and returned to it for lack of sufficient funds in the bank accounts on which they were respectively drawn; and all of which, as he then was, to its knowledge, aware, it was holding pending such action as it might take or cause to be taken regarding them, and the aggregate amount of which said unpaid checks had been on or before October 8, 1955 debited by said old firm to and became a part of its Note Receivable account from said Bankrupt; and that except as herein in this paragraph above found to be true, each and all of the allegations of paragraph VIII of the First Count of Plaintiff's said Complaint on file herein are untrue.

#### V.

That the old firm then claimed and it was a fact that at said time said Bankrupt owed to said old firm the sum of \$28,116.63, inclusive of the afore-

mentioned dishonored checks in the respective sums of \$2,500.00, \$741.26, and \$7,310.98, protest fees thereon in the sum of \$21.00, its warehouse account in the sum of \$17,416.05, and interest on its said warehouse account, accrued pursuant to the terms of said May Agreement, in the additional sum of \$127.34, and all of which said sum was then and there secured by the aforesaid warehouse receipts; and that at said time, as the old firm knew, said Bankrupt was and had long been indebted to numerous other creditors whose claims against him were of a nature to be provable in bankruptcy as defined by the Bankruptcy Act, but said Bankrupt, nevertheless, was determined to and did continue his said business as long as he could; and that except as herein this paragraph above found to be true, each and all of the allegations of paragraph IX of the First Count of Plaintiff's Complaint on file herein are untrue.

## VI.

That under the circumstances outlined in the preceding paragraph hereof, and upon terminating the May Agreement, as aforesaid, the old firm informed the Bankrupt that it would not release any of his merchandise covered by the warehouse receipts thereon held by said old firm for delivery to any of his customers unless, nor until, he substantially reduced his indebtedness to it or made some new arrangement with respect thereto satisfactory to said old firm, and that unless he complied promptly with either of said alternatives, said old firm would proceed, by the use of its said ware-



house receipts, to lawfully realize upon same as security for the said indebtedness of said Bankrupt to said old firm; that in response to this information and between August 20 and September 28, 1953, the Bankrupt executed and delivered to the old firm on account of that indebtedness five checks aggregating \$13,447.98, all of which were dishonored on presentation and protested, three of which, aggregating \$10,552.18, have never been paid and were retained by the old firm until the time of the trial of this suit; that the old firm continued to hold its said warehouse receipts and to refuse to permit any use by the Bankrupt of his stock in trade until the completion of the October transaction as described below; and that except as herein in this paragraph above found to be true, each and all of the allegations of paragraph X of the First Count of Plaintiff's said Complaint on file herein are untrue.

## VII.

In response, also, to the aforesaid information, said Bankrupt attempted to formulate and effectuate a new arrangement which would be satisfactory to the old firm and ultimately and on or immediately prior to October 6, 1953, said Bankrupt proposed and said old firm agreed to a new arrangement which was actually effectuated by the so-called "October transaction"; and that the latter consisted of the events more particularly set forth in paragraph XI of the First Count of Plaintiff's Complaint on file herein commencing with line 21, page 7, of said Complaint, and ending on line 10, page



8 thereof, saving and excepting that the said old firm did not give to the two attorneys employed by the Bankrupt directions for the preparation of said "Trust Agreement"; and that except as herein in this paragraph above found to be true, each and all of the allegations of paragraph XI of the First Count of Plaintiff's said Complaint on file herein are untrue.

### VIII.

That the terms and conditions of the said Note and Trust Agreement were and are as set forth in Exhibit "A" and Exhibit "B" annexed to Plaintiff's Complaint.

### IX.

That the allegations contained in paragraph XIII of the First Count of Plaintiff's Complaint commencing with the word "during" on line 25, page 9 thereof, and ending on line 2, page 10 thereof, are untrue.

### X.

That neither the said Promissory Note nor the said "Trust Agreement" was intended by the old firm or by said Bankrupt to discharge any antecedent indebtedness of his to said old firm, but that thereby said old firm procured the guaranty of said Promissory Note for \$28,000.00 by said Pearl K. Lannin and surrendered as aforesaid the warehouse receipts, by means of which the merchandise of said Bankrupt covered thereby was, in fact, through new warehouse receipts issued by said warehouseman to said Pearl K. Lannin given as security to said Pearl K. Lannin for her said guaranty of said

Promissory Note to said old firm; and that except as herein in this paragraph above found to be true, each and all of the allegations of paragraph XIV of the First Count of Plaintiff's said Complaint on file herein are untrue.

### XI.

That each and all of the allegations contained in paragraphs numbered XV, XVI and XVIII of the First Count of Plaintiff's said Complaint on file herein are untrue.

### XII.

That each and all of the allegations contained in paragraph XVII of the First Count of Plaintiff's said Complaint on file herein are true, saving and excepting that said Pearl K. Lannin proved a claim in said bankruptcy proceeding in the sum of \$16,784.98.

### XIII.

That upon said Note and from the funds of said Bankrupt payments were made to the new firm aggregating the total sum of \$5,000.00, of which \$2,500.00 was paid on January 15, 1954, and the remaining \$2,500.00 was paid between April 24, 1954 and June 16, 1954.

### XIV.

That each and all of the allegations contained in paragraph XX of the First Count of Plaintiff's said Complaint on file herein are untrue, saving and excepting that it is true that all of the things as found in these findings occurred in the State of California.

## XV.

That in and by an Order of the above-entitled Court made and entered herein by Hon. Bernard J. Abrott, Referee in Bankruptcy in charge of the bankruptcy proceedings of said George F. Elliff on the 18th day of August, 1955, the claim of said Pearl K. Lannin to ownership of the merchandise covered by her warehouse receipts which was at the time of the commencement of said bankruptcy proceedings in the said field warehouse of said Bankrupt was determined to be invalid as against Plaintiff herein.

## XVI.

The Defendant, Mrs. Pearl K. Lannin, was a guarantor of the note mentioned herein and was and is a proper party defendant and cross-complainant in this suit.

## (Second Count)

## I.

That such of the facts found above in connection with Plaintiff's First Count as are applicable to and referred to in paragraph I of his Second Count are hereby incorporated and made part of these Findings in connection with his said Second Count.

## II.

That each and all of the allegations contained in paragraphs II, III and IV of the Second Count of Plaintiff's Complaint on file herein are true.

## III.

That at the times mentioned in paragraph II of

the Second Count, by virtue of the warehouse receipts issued to and held by Pearl K. Lannin pursuant to the terms of the "Trust Agreement" referred to in the First Count, Defendant Twin City Lumber Company had security for its debt upon that portion of the stock-in-trade of said Bankrupt as was covered by said warehouse receipts.

(Third Count)

I.

That such of the facts found in connection with Plaintiff's First Count as are applicable to and referred to in paragraph I of his Third Count are hereby expressly referred to and made part of these Findings in connection with his said Third Count.

II.

That each and all of the allegations contained in paragraphs II (as amended November 21, 1955), III, and IV of the Third Count of Plaintiff's Complaint on file herein are true.

(Fourth Count)

I.

That such of the facts found in connection with Plaintiff's First Count as are applicable to and referred to in paragraph I of his Fourth Count are hereby expressly referred to and made part of these Findings in connection with his said Fourth Count.

II.

That each and all of the allegations contained in

paragraphs II and IV of the Fourth Count are untrue.

### III.

That each and all of the allegations contained in paragraph III of the Fourth Count of Plaintiff's said Complaint on file herein are true.

### (Cross-Complaint)

#### I.

This Court makes with respect to the Cross-Complaint of Pearl K. Lannin filed herein the same Findings with regard to those allegations of the First Count of Plaintiff's Complaint on file herein as are hereinabove made with respect to said First Count, to the extent that said allegations of said First Count are incorporated by reference in paragraph I of said Cross-Complaint.

#### II.

That each and all of the allegations contained in paragraph II of said Cross-Complaint are untrue.

#### III.

That on or about the 28th day of September, 1953, the Bankrupt requested Cross-Complainant to endorse as Guarantor a Note for \$28,000.00 which he proposed to execute, together with his wife, daughter of Cross-Complainant, to the order of the old firm; that in support of that request he also offered to secure Cross-Complainant against any possible liability on the requested guaranty by causing (1) to be issued to her warehouse receipts



upon the greater portion of his stock-in-trade of lumber then located in a field warehouse and covered by warehouse receipts issued to and held by Cross-Defendants and which were to be (as they subsequently were) released by the old firm in favor of Cross-Complainant and (2) by the terms and conditions of that said "Trust Agreement" described in Exhibit "B" annexed to Plaintiff's Complaint on file herein; and that except as hereinabove in this paragraph otherwise found true each and all of the allegations contained in paragraph III of said Cross-Complaint are untrue.

#### IV.

That each and all of the allegations in paragraph IV of said Cross-Complaint are untrue, saving and excepting that it is true that upon demand of the new firm Cross-Complainant made to the new firm the payments aggregating \$2,000.00 as more particularly in said paragraph IV set forth.

#### V.

That each and all of the allegations contained in paragraphs V and VII of said Cross-Complaint are untrue.

#### VI.

That each and all of the allegations contained in paragraph VI of said Cross-Complaint are true, saving and excepting that on or about the 18th day of August, 1955, Hon. Bernard J. Abrott, Referee in Bankruptcy in charge of the bankruptcy proceedings of said George F. Elliff, made and entered



an Order in the above-entitled Court invalidating the claim of said Pearl K. Lannin to ownership of the merchandise covered by her warehouse receipts which was at the time of the commencement of said bankruptcy proceedings in the said field warehouse of said Bankrupt.

Wherefrom, the Court draws and makes the following

### Conclusions of Law

#### I.

That this is a plenary suit by the Trustee in Bankruptcy to recover transfers claimed to be fraudulent under Sections 60(b) and 67(d) of the Bankruptcy Act, 11 U.S.C.A. 96(b) and 107(d); and that the Court has jurisdiction of this suit under 11 U.S.C.A. 1, 11, 96(b), and 107(e).

#### II.

That neither the Promissory Note nor the Trust Agreement respectively denominated as Exhibits "A" and "B" annexed to said Plaintiff's Complaint were nor are fraudulent as against the creditors of George F. Elliff, bankrupt, under Section 67(d) of the Bankruptcy Act or under any other applicable statute of the State of California.

#### III.

That at the time of the receipt by said Defendants of the \$2,500.00 paid by said Bankrupt to Defendant Twin City Lumber Company and/or Twin City Company as alleged in paragraph XIX of Plain-

tiff's Complaint, within the four months next preceding the commencement of the Bankruptcy proceedings of said George F. Elliff, said Twin City Lumber Company and/or Twin City Company as its successor in interest as payee of the Promissory Note heretofore and therein referred to was a secured creditor within the meaning of Section 1 (28) of the Bankruptcy Act.

#### IV.

That defendants Twin City Company, also known as Twin City Lumber Co.; John W. Hunter; Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins; and William W. Ramsay received a preference voidable under Section 60(b) of the Bankruptcy Act by virtue of the facts found to be true by this Court in connection with Plaintiff's Third Count, to the extent of \$4,816.62.

#### V.

That Plaintiff is entitled to judgment against Defendants Twin City Company, also known as Twin City Lumber Co.; John W. Hunter; Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins; and William W. Ramsay in the sum of \$4,816.62, plus legal interest thereon from date of such judgment, together with his costs incurred in connection with the prosecution of the Third Count of his Complaint on file herein.

VI.

That Defendants Twin City Company, also known as Twin City Lumber Co.; John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins; and William W. Ramsay are entitled to judgment against Plaintiff upon the First, Second and Fourth Counts of Plaintiff's Complaint on file herein and against Cross-Complainant on her Cross-Complaint herein filed, together with the costs incurred by defendants in connection therewith.

Let judgment be entered accordingly.

Dated: March 30, 1956.

/s/ O. D. HAMLIN

United States District Judge

[Endorsed]: Filed March 30, 1956.

In the United States District Court, Northern  
District of California, Southern Division

Civil Action No. 34590

RALPH E. WILLIAMS, as Trustee in Bank-  
ruptcy, etc.,  
vs.  
Plaintiff,

TWIN CITY LUMBER COMPANY, etc., et al.,  
Defendants.

PEARL K. LANNIN,  
Defendant and Cross-Complainant,

vs.

TWIN CITY COMPANY, also known as TWIN  
CITY LUMBER CO., and herein called the  
“OLD FIRM”, a firm of copartners, TWIN  
CITY LUMBER CO., herein called the “NEW  
FIRM”, a firm of joint adventurers, JOHN  
W. HUNTER, individually and as a member  
of said “OLD FIRM”, and FRANKLIN  
SUPPLY CORP., a corporation, SOUTH-  
WEST MANAGEMENT CORP., a corpora-  
tion, H. A. COLLINS and WILLIAM W.  
RAMSAY, individually, and as members of  
said “NEW FIRM”, Cross-Defendants.

### JUDGMENT

The above-entitled action upon the Complaint of  
Plaintiff and the Answer thereto heretofore filed  
herein by Twin City Company, also known as Twin  
City Lumber Co., John W. Hunter, Franklin Sup-  
ply Corp., a corporation; Southwest Management  
Corp., a corporation; H. A. Collins, and William W.  
Ramsay, and upon the Answer thereto and the  
Cross-Complaint of Defendant and Cross-Complain-

ant, Pearl K. Lannin and the Answer to said Cross-Complaint heretofore filed herein by the Cross-defendants above-named, and upon the issues so joined, having regularly come on for hearing before the above-entitled Court for trial, said Court sitting without a jury, a trial by jury of said issues having been expressly waived, commencing on the 21st day of November, 1955, said Plaintiff being represented by C. Huntington Jacobs, Esq., his attorney, the Defendants and Cross-Defendants Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins, and William W. Ramsay being represented by Messrs. Shapro & Rothschild (Arthur P. Shapro, Esq., and Daniel Aronson, Jr., Esq., appearing), their attorneys, and Defendant and Cross-Complainant Pearl K. Lannin being represented by Robert N. Jacobs, Esq., her attorney, and no appearance having been made by or on behalf of Defendant Audrey Mae Elliff, and evidence, both oral and documentary having been adduced by the respective parties upon the issues so joined, and the matter having been submitted to the Court for decision, and the Court being fully advised in the premises and having heretofore made and filed herein its Findings of Fact and Conclusions of Law upon said issues, and good cause appearing therefor,

It is Hereby Ordered, Adjudged and Decreed that Plaintiff, Ralph E. Williams, as Trustee in Bankruptcy of the Estate of George F. Elliff, an individual doing business as "Pine Supply Co," Bankrupt,



do have and recover of and from Defendants, Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins, and William W. Ramsay, and each of them the sum of \$4,816.62 plus legal interest thereon from date hereof until paid, together with said Plaintiff's costs herein in connection with the Third Count of his Complaint on file herein and taxed at the sum of \$————; and

It Is Further Ordered, Adjudged and Decreed that said Plaintiff take nothing herein as against said Defendants, or any of them, by virtue of the First, Second and Fourth Counts of his said Complaint or any one of them and that said Defendants Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins and William W. Ramsay, have and recover of and from said Plaintiff their costs herein incurred in connection with said First, Second and Fourth Counts of Plaintiff's Complaint and taxed at the sum of \$22.00; and

It Is Further Ordered, Adjudged and Decreed that Pearl K. Lannin, Cross-Complainant herein, take nothing as against Cross-Defendants Twin City Company, also known as Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., a corporation; Southwest Management Corp., a corporation; H. A. Collins and William W. Ramsay, or any of them, by reason of her Cross-Complaint on file herein and that said Cross-Defendants, and each of



them, do have and recover of and from said Cross-Complainant their costs herein incurred in connection with the said Cross-Complaint and taxed at the sum of \$22.00.

Dated at San Francisco in said District this 30th day of March, 1956.

/s/ O. D. HAMLIN  
District Judge

Entered in Civil Docket March 30, 1956.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 30, 1956.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is Hereby Given:

That Ralph E. Williams, as such Trustee and Plaintiff, hereby appeals to the United States Court of Appeals for the Ninth Circuit from so much of the final judgment entered in this action on March 30, 1956, as denies to said Ralph E. Williams any recovery against the respondents above named, upon Counts I and IV of his Complaint herein filed, and awards to said respondents costs incurred by them in the defense of said Counts I and IV, and

That Pearl K. Lannin, as such Cross-Complainant, hereby appeals to the United States Court of Appeals for the Ninth Circuit from so much of the

said final judgment as denies to her any recovery on her Cross-Complaint herein filed, and awards to said respondents costs incurred by them in defense of said Cross Complaint.

/s/ C. HUNTINGTON JACOBS

Attorney for Plaintiff and Appellant  
Ralph E. Williams.

/s/ ROBERT N. JACOBS

Attorney for Cross-Complainant and  
Appellant, Pearl K. Lannin.

[Endorsed]: Filed April 30, 1956 .

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[Title of District Court and Cause.]

## UNDERTAKING FOR COSTS AND DAMAGES ON APPEAL

Whereas, the Plaintiff and Appellant and the Cross Complainant and the Appellant in the above entitled action are about to appeal to the District Court of the United States for the Northern District of California, Southern Division, from a judgment entered against them in said action, in the above entitled Court on the 30th day of March, 1956, in favor of the respondents in said action, and denying to Plaintiff and Appellant any recovery under Counts I and IV of his Complaint herein, and denying Cross Complainant and Appellant any recovery on her Cross Complaint herein and awarding costs to defendants and respondents.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, the Central Surety and Insurance Corporation, a corporation duly organized and doing business under and by virtue of the laws of the State of Missouri, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, does undertake and promise, on the part of the said Cross Complainant and Appellant, that said Cross Complainant and Appellant will pay all costs which may be awarded against her on the appeal, or on a dismissal thereof, not exceeding the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) to which amount it acknowledges itself bound.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Jose, California, by its duly authorized Attorney-in-Fact, this 30th day of April, 1956.

[Seal] CENTRAL SURETY AND INSURANCE  
CORPORATION

/s/ R. B. SULLIVAN  
Attorney-in-Fact

Power of Attorney Attached.

Notary Certification Attached.

[Endorsed]: Filed April 30, 1956.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
RECORD ON APPEAL

Good cause appearing therefor, it is

Ordered that the time for docketing the record on appeal in the above case be extended to July 10, 1956.

June 5, 1956.

/s/ O. D. HAMLIN,

United States District Judge

[Endorsed]: Filed June 5, 1956.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries

Complaint

Answer of Pearl K. Lannin

Cross-complaint of Pearl K. Lannin

Answer of Twin City Company, aka Twin City Lumber Co., John W. Hunter, Franklin Supply Corp., Southwest Management Corp., H. A. Collins and William Ramsay.

Answer of defendants to cross-complaint of Pearl  
K. Lannin

Amendment to Complaint

Order for Judgment

Findings of Fact and Conclusions of Law

Judgment

Notice of Appeal

Appeal Bond

Designation of Record on Appeal

Order Extending Time to Docket Record on Ap-  
peal

Reporter's Transcript of Proceedings, November  
21, 22, 23, 28 and 29, 1955.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,  
12, 13, 14, 15, 15-a, 16, 17, 18, 19, 20 and 21

Defendants' Exhibits: A, B, C (Ident.), D  
(Ident.), E, F, G, H, I, J and K.

Lannin Exhibit L-1.

In Witness Whereof, I have hereunto set my  
hand and affixed the seal of said District Court this  
9th day of July, 1956.

[Seal]

C. W. CALBREATH,

Clerk,

/s/ By MARGARET P. BLAIR,

Deputy Clerk

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the original filed in this Court in the above-entitled case and constitute the supplemental record on appeal as designated by counsel for the appellant but not included in the original record for the reason they were not received from the Court Reporters at that time:

Reporter's Transcript of proceedings, Dec. 8, 1955.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 23rd day of July, 1956.

C. W. CALBREATH,  
Clerk,

/s/ By MARGARET P. BLAIR,  
Deputy Clerk



In the United States District Court for the  
Northern District of California,  
Southern Division

No. 34590

RALPH E. WILLIAMS, as Trustee in Bankruptcy of the Estate of GEORGE F. ELLIFF, an individual doing business as "PINE SUPPLY CO.," Bankrupt, Plaintiff and Appellant, and PEARL K. LANNIN,  
Cross-Complainant and Appellant,

vs.

TWIN CITY COMPANY; TWIN CITY LUMBER CO.; JOHN W. HUNTER; FRANKLIN SUPPLY CORP., a corporation; SOUTHWEST MANAGEMENT CORP., a corporation; R. A. COLLINS and WILLIAM W. RAMSAY, Respondents.

## REPORTER'S TRANSCRIPT

Monday, November 21, 1956

Before: Hon. Oliver D. Hamlin, Judge.

Appearances: For the Plaintiff and Appellant: C. Huntington Jacobs, Esq., for the Cross-Complainant & Appellant: Robert N. Jacobs, Esq., for the Respondents: Arthur P. Shapro, Esq. [1]\*

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Monday, November 21, 1955

10:00 O'Clock A. M.

(Opening statements were made by the following counsel: Mr. C. Huntington Jacobs; Mr. Arthur P. Shapro; and Mr. Robert N. Jacobs.)

GEORGE F. ELLIFF

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. C. Huntington Jacobs): Your full name is George F. Elliff, isn't it?

A. That's right.

Q. And what is your business or occupation?

A. Sales representative.

Q. Are you engaged in the lumber business?

A. Yes, sir.

Q. And have you been engaged in the lumber business for a considerable period of time?

A. Yes, sir.

Q. When did you start in that business?

A. 1936.

Q. When did you first meet, if you ever did, the defendant, Mr. Hunter?

A. In the spring of 1950.

Q. And what were you doing then? [2]

A. Operating a saw mill at Boonville, California.

Q. Now, did that concern have a name?

A. Coast Range Lumber Company.

(Testimony of George F. Elliff.)

Q. Did that concern have dealings with Mr. Hunter?        A. Yes, sir.

Q. And did you have personal dealings with him?

A. I handled the dealings of Coast Range Lumber Company with Mr. Hunter, yes.

Q. When did that concern close its business, if it did?

A. It became inactive in the spring of 1952.

Q. And at that time did you have any conversation with Mr. Hunter about its affairs?

A. Yes, sir, I did.

Q. And about your own affairs?        A. Yes.

Q. Where did these conversations take place, Mr. Elliff?

A. In Mr. Hunter's office in Los Angeles, California.

Q. In whose presence?

A. Well, on one occasion, a Mr. Charles Lannon was present.

Q. Mr. Charles Lannon, was he connected with this concern?

A. He was vice-president of the corporation.

Q. I see. Now, state what in reference to your affairs, in your financial condition, was said and by whom at that interview?

Mr. Shapro: To which we will object, your Honor, upon [3] the grounds it is incompetent, irrelevant and immaterial. The note in question is October, '53, the preferential payments in the spring of 1954. The question is directed to a time in 1952.

(Testimony of George F. Elliff.)

The Court: It's for the purpose of bringing notice to this——

Mr. Jacobs: That is right, sir, it's preliminary.

The Court: Answer the question.

The Witness: In the presence of Mr. Lannon you wanted to know what the conversation consisted of at that time?

Q. (By Mr. Jacobs): Yes.

A. Well, it was the paying off of a note that we owed Mr. Hunter that he had advanced money on certain lumber to be purchased by Twin City Company.

The Court: Well, now——

Q. (By Mr. Jacobs): Wait a minute. I asked you to tell us what conversation took place in reference to your financial condition.

A. I was getting——

Q. Oh, very well.

A. By referring to the fact that we had been a long time paying off some money that he had advanced. At the conclusion of this payoff he asked me what I intended to do personally after they closed the lumber company.

The Court: Asked what? [4]

A. What I intended to do personally. And he sympathized with the fact that we hadn't made any money and I had lost what I had in it personally.

Q. (By Mr. Jacobs): Did you have any subsequent conversations with Mr. Hunter regarding your personal financial condition? And by personal, I mean to include all of your condition, in-

(Testimony of George F. Elliff.)

cluding your business and other assets and liabilities. A. Not until 1953, I would say.

Q. And where did you have the first of the conversations, if there were more than one, in 1953?

A. I believe it was in Los Angeles again at his office.

Q. And who was present on that occasion?

A. Mr. Hunter and myself, I believe, was all.

Mr. Shapro: May we have the time a little more definite?

Q. (By Mr. Jacobs): About what time of the year was this?

A. This was in the early spring, I believe, in 1950.

The Court: 19 what?

A. 1953 it was.

Q. (By Mr. Jacobs): And who did you say was present?

A. Mr. Hunter and myself at that occasion.

Q. What was said and by whom in regard to your financial condition on that occasion?

A. Well, I was trying to establish myself in business again and had related to him the facts that I had this partner who was financially able to take care of the purse. [5]

The Court: Will you keep your voice up, please, Mr. Elliff?

A. I will try. I have a little throat trouble.

And I think I related to him that——

The Court: You related to him what?

A. That I wanted to go in this Pine Supply



(Testimony of George F. Elliff.)

business, that we had started it, and it had a very good possibility of making some money. That in essence is the gist of the conversation, I mean.

Q. (By Mr. Jacobs): Now, did he ask you anything about your personal financial affairs?

Mr. Shapro: Object to the form of the question, if your Honor please, upon the ground it is leading and suggestive. He has already asked for the substance of the conversation.

The Court: What is asked for is any conversation you had with Mr. Hunter at that time concerning your financial condition. If there was any such conversation, relate it, please.

The Witness: I think it was common knowledge——

The Court: We are required to deal in conversations and that is what has been asked for.

The Witness: At that particular time, I couldn't say that he did. It might have been discussed, but it was loosely discussed. [6]

The Court: But you can't recall what was said?

The Witness: Not on that particular occasion, no, sir.

Q. (By Mr. Jacobs): You had other conversations, as I understand it, with him about that matter?

A. In May of 1953 I spent a Sunday at his home in Los Angeles.

Q. Now, Mr. Elliff, you mentioned the fact that you had a partner or that you had told Mr. Hunter that you had one. Did you have one?

(Testimony of George F. Elliff.)

A. Yes, sir.

Q. And his name was what?

A. Louis Hodes.

Q. And what was the name of the concern, the partnership?      A. Abbott-Lane.

Q. Now, when was Abbott-Lane formed?

A. November 1st, 1952.

Q. And who were the partners, all of them?

A. Mr. Hodes and myself.

Q. Was that partnership subsequently dissolved?

A. Yes.

Q. Did you put money into that partnership?

A. I did, yes.

Q. How much?      A. \$2,000.00.

Q. Where did you get it?

A. I borrowed it. [7]

Q. From whom?

A. My mother-in-law, Mrs. Lamb.

Q. Did Mr. Hodes put money into it?

A. Yes, he did.

Q. And how much?      A. Roughly \$2,000.00.

Q. And when that partnership was dissolved, what was its financial condition?

Mr. Shapro: Object to that, if your Honor please, upon the ground it calls for the opinion and conclusion of the witness. He can ask him what the assets were and what the liabilities were, but not the financial condition, if your Honor please.

The Court: I think that is probably correct.

Mr. Jacobs: I will reframe the question.

(Testimony of George F. Elliff.)

Q. What were its assets and liabilities in general terms, if you know?

A. I didn't know at that time, but after the audit was made the liabilities exceeded his assets.

Q. The liabilities exceeded the assets?

A. Yes, sir.

Q. Of the partnership? Now, then, Mr. Elliff, did that partnership have dealings with Twin City Company?      A. They did.

Q. And what was the nature of those dealings?

A. We purchased truck and trailers and lumber for them.

The Court: You purchased lumber for them?

The Witness: Yes.

Q. (By Mr. Jacobs): What can you tell us about the manner in which payments were made for the purchases that you made for them?

A. I believe there were only three purchases we made as Abbott-Lane. The first purchase was on a trade acceptance, a 30-day trade acceptance signed by Mr. Hodes and myself.

The second two were to be on trade acceptance, but we never made out the trade acceptance; and in turn we discounted them. They were delinquent. But I remember, recall, taking \$5,000.00 to Mr. Hunter at one time in Los Angeles on the second purchase.

Q. Well, respecting the time that was elapsed between the purchase and the payment, what can you tell us about the payment?

A. The elapse of time between the purchases?

(Testimony of George F. Elliff.)

Q. Yes.

A. Well, I would say that we were always delinquent.

Q. You were always delinquent? A. Yes.

Q. Now, at that time what position did Mr. Hunter hold, if you know, in the Twin City Company, the old firm, as we call it?

A. I presumed he was part owner, if not the financial funds [9] behind it. I always carried that in my mind.

Q. Was he the man with whom you dealt when you dealt with that concern, or not?

A. I dealt with Mr. Collins, as well as Mr. Hunter. But Mr. Hunter always had the final word in everything.

Q. I see. Now, you spoke of other conversations that you had with Mr. Hunter during 1953 regarding your financial condition. You mentioned one that occurred very early in the spring, I think you said, of 1953. Let's ask when this partnership was dissolved: Do you recall?

A. I think I am correct in saying May 28, 1953.

The Court: The Abbott-Lane was dissolved May 28, 1953?

The Witness: There was a dissolution of partnerships. We had changed names. Prior to that we called it the Pine Supply Company, so the dissolution took place under Pine Supply Company.

The Court: Now, let's go back a little. When was Pine Supply formed?

The Witness: I believe the 1st of May we

(Testimony of George F. Elliff.)

changed the name over and settled on Pine Supply Company.

The Court: So that about the 1st of May Abbott-Lane changed its name to——

The Witness: Pine Supply Company.

The Court: Pine Supply. And then about the end of May——

The Witness: The 28th, I believe, is correct. [10]

The Court: What?

The Witness: The 28th of May there was a dissolution, Pine Supply was dissolved; the partnership of Hodes and Elliff was dissolved.

The Court: All right.

Q. (By Mr. Jacobs): Now, when, with reference to the dissolution of your partnership with Mr. Hodes did your conversation of '53 with Mr. Hunter take place, the one you have mentioned?

A. It was prior to the dissolution. I think it was around May 4th, the weekend of May 4th.

Q. I see. Where did that take place did you say?

A. At Mr. Hunter's home in Beverly Hills, California.

Q. I see. And at that time had there been any discussion between yourself and Mr. Hodes regarding the dissolution?      A. No, sir.

Q. Did you have any discussion on that occasion regarding the dissolution with Mr. Hunter?

A. I wasn't even aware that there was going to be a dissolution myself.

Q. I see. Now, did you discuss the dissolution of partnership with Mr. Hunter prior to the dis-



(Testimony of George F. Elliff.)

solution itself?           A. No, sir.

Q. Did the partnership known under its new name of Pine Supply Company continue to deal with the old firm? [11]           A. Yes, sir.

Q. And when the dissolution occurred, which of the partners continued the business, if either?

A. I did.

Q. When Mr. Hodes withdrew from the partnership, on what terms did he withdraw?

A. It was rather a complicated dissolution because he had purchased a home from me and he owed me a balance on that home. And I cancelled that note and signed a note for what he considered was the assets of the company.

Q. Well, now, am I correct in understanding that you bought Mr. Hodes' interest in the partnership at the time of the dissolution?           A. I did.

Q. And how much money in round figures?

A. I couldn't honestly say. I know I cancelled, I think, a \$6,000.00 note. I think it was in excess of \$6,000.00 and I signed—I believe it was closer to \$8,300.00, I believe, something like that.

Q. Mr. Elliff, when I refer to solvency, I mean the condition in which a man has as much assets in market value as the sum total of his debts. Having in mind what I mean by the term, when you took over that partnership, were you solvent or insolvent?

Mr. Shapro: I object to the question that it calls [12] for the opinion and conclusion of the witness.

The Court: I guess that is a matter for the

(Testimony of George F. Elliff.)

Court to determine, isn't it, counsel, from the evidence?

Mr. Jacobs: I can ask him the same question in another form, your Honor, simply to this extent:

Q. Did you at that time have as much assets in market value as you had debts?

Mr. Shapro: To which we will address the like objection, your Honor.

The Court: I suppose, counsel, what you should show is what assets he had and what liabilities he had. From that the Court can draw a conclusion.

Mr. Jacobs: I can get that more specifically from his accountant's testimony, I presume, your Honor.

The Court: What is that?

Mr. Jacobs: I say, I will have to show that more specifically by his accountant's testimony. He made the audit that he has referred to. But it does seem to me that he ought to be able—he ought to be entitled to testify whether he had as much assets as he had debts. At any particular time a man normally knows——

The Court: You may get to the same point because the witness undoubtedly can give the value of such assets as he has, what his opinion of the value of those assets is. We may get to the same point. But on the face of the objection, I think [13] we will have to do it that way.

Mr. Jacobs: I see, very well, sir.

Q. What did you consider was the total value

(Testimony of George F. Elliff.)

of all your assets at the time when you started out in partnership?

Mr. Shapro: Same objection, your Honor.

The Court: I think we have to find out what his assets were and then you can ask him his opinion of each asset, as to what it is worth.

Mr. Jacobs: Very well.

Q. What assets did you have at the time when you took over this partnership, this Pine Supply Company?

A. Well, I had this note for around \$6,000.00 by Mr. Hodes, which was——

The Court: Wait a minute. You had a note for \$6,000.00 signed by whom?

The Witness: Signed by Louis Hodes and Lillian Hodes.

The Court: Was that secured?

The Witness: No, no. It wouldn't have been more secure than they were, than they were financially secure.

The Court: Was it carried by any specific property?

The Witness: No, no. I think it was a four-months note. It was due the 1st of June, so it was almost due at the time of the dissolution.

Q. (By Mr. Jacobs): Now, did you still have that note after the dissolution? [14]

A. No.

Q. What did you have after the dissolution and when you started in on your own?

A. Well, I think the total assets were entirely

(Testimony of George F. Elliff.)

in Pine Supply, outside of maybe a couple of automobiles——

Q. And——

A. Just a minute. I had a lot. I had a lot left, a one-acre lot left on Mount Hamilton Road.

Q. What is the value of that?

A. Oh, roughly \$2500.00.

Q. And what would you say were the assets of Pine Supply in general terms?

A. I frankly didn't know at the time, I mean, at the dissolution. I didn't know until Mr. Baum made an audit in July.

Q. You eventually found out, did you not?

A. I did.

Q. All right. Tell us now what you found out.

A. The liabilities exceeded the assets by several thousand dollars.

Q. Well, what was the nature of the assets at the time when you first took over?

A. Pine lumber, plywood, molding.

Q. And did you also assume the debts of the partnership?

A. I assumed the liabilities of the purchase of, yes, of the partnership. [15]

Q. When you took over?      A. Yes, sir.

Q. Now, then you spoke of subsequent conversations that you had with Mr. Hunter in 1953. Before we go into that, let me ask you whether under your individual ownership Pine Supply Company continued to deal with the old firm?

A. Yes, sir, they did.

(Testimony of George F. Elliff.)

Q. And what was the next conversation as near as you can remember that you had with Mr. Hunter in 1953?

A. It was on about the 22nd of May. I called him and told him that Mr. Hodes and I were dissolving partnership.

Q. And did you on that occasion have any discussion with him regarding your financial condition?      A. Yes.

Q. Now, whereabouts did that conversation take place, did you say?      A. That was by telephone.

Q. That was by telephone. Did you call him?

A. I called him.

Q. And where did you call him?

A. In Los Angeles.

Q. I see. You were then in San Jose?

A. I was in San Jose.

Q. By the way, let me supply this detail. The Pine Supply Company was located where? [16]

A. 1565 Almaden Road, San Jose.

Q. San Jose. Was that where its stock in trade was located?      A. It was.

Q. Now, in this telephone conversation with Mr. Hunter, what was said and by whom regarding your financial condition?

A. He couldn't see how I could possibly take over.

The Court: What?

Q. (By Mr. Jacobs): Tell us what he said—I take it that is what you are trying to do?

A. That is what I am doing. That Mr. Hunter



(Testimony of George F. Elliff.)

couldn't possibly understand how I could take over and he would have to give it some thought if he was going to continue to do business with me.

Q. You said he did not see how you could take over?  
A. That's right.

Q. Did he explain that remark?

A. Well, he knew that I had very little assets myself.

Mr. Shapro: If your Honor please, he said "he knew." I move to strike it as a conclusion of the witness.

Mr. Jacobs: I will consent to that.

Q. Tell us what was said. You do not use the words that were used, but the substance of the conversation, you see, Mr. Elliff.

A. He knew I wasn't stable enough to continue in business by myself. [17]

Mr. Shapro: I make the same motion, your Honor.

The Court: I didn't hear the last. Miss Reporter, will you please read the answer?

(Answer read.)

The Court: It may go out. Mr. Elliff, we are required to deal by what one person said and what the other person said by conversations, not from conclusion that you might have. It is for the Court to draw the conclusion after we hear the conversation that was said. So will you try to confine your statements.

Q. (By Mr. Jacobs): Let's have the rest of

(Testimony of George F. Elliff.)

your conversation regarding your ability to take over. What did he say?

A. He said he would have to give it some thought. He talked to me at length about the warehouse which we had set up at that time and that was secured. He spoke of the fact that I had to agree to the release clauses in the contract and that he would get in touch with me later and give it some decision.

Q. (By the Court): Now, release clauses in what contract?

The Witness: On May 1st, the 1st of May, we had set up a warehouse in which he was carrying the warehouse receipts.

Q. (By Mr. Jacobs): Now, was there any exchange of correspondence regarding this warehouse arrangement? A. Yes, sir, there was.

Q. Did you receive any letters, any letter or letters from Mr. Hunter in that regard? [18]

A. I did, yes, sir.

Q. I show you a letter on the letterhead of Twin City Lumber Company, dated May 4, 1953, addressed to Mr. George F. Elliff, and purportedly signed by Twin City Lumber Company by J. W. Hunter, and ask you whether that is the letter that you refer to.

A. This is a program that he laid out in the terms of the contract to warehouse the material in the Pine Supply. That is the letter.

Mr. Jacobs: We offer this in evidence as Trustee's Exhibit 1, if your Honor please.

(Testimony of George F. Elliff.)

The Court: Plaintiff's Exhibit 1. Give it to the Clerk.

(Thereupon the foregoing document was marked Plaintiff's Exhibit 1 and received in evidence.)

Q. (By Mr. Jacobs): Did you ever receive from Mr. Hunter a counter file of a letter addressed to the Douglass Guardian Warehouse Corporation by Mr. Hunter, a carbon copy?

A. Yes, yes I did.

Q. In regard to that same letter, the warehousing arrangement namely?

A. As I recall the letter, yes. It outlined the same thing as in the first letter.

Q. I show you a carbon copy bearing date May 6, 1953, addressed to Douglass Guardian Warehouse Corporation by Twin City Lumber Company, with the signature "J. W. Hunter," [19] a purported signature, J. W. Hunter. Do you recognize the signature at the foot of that letter?

A. Yes, I do.

Q. Whose is it? A. John Hunter's.

Q. And this is the carbon copy that you have referred to as having received from Mr. Hunter?

A. Yes, I received this.

Mr. Jacobs: I will offer this as Trustee's Exhibit 2, your Honor.

The Court: It may be marked Exhibit 2.

(Whereupon the foregoing document was marked as Plaintiff's Exhibit 2 and received in evidence.)

(Testimony of George F. Elliff.)

Q. (By Mr. Jacobs): Now, Mr. Elliff——

The Court: Just a moment, counsel. Will you let me read the letter?

Mr. Jacobs: Oh, I beg your Honor's pardon.

The Court (Reading): All right.

Q. (By Mr. Jacobs): Did you have any discussion with Mr. Hunter regarding this warehousing arrangement prior to the receipt of the letter of May 4th? A. Yes, sir, I did.

Q. Where did that discussion take place?

A. Well, it was over a long period of time by telephone. Finally I made a trip to Los Angeles and talked to him about it. [20]

Q. When was that?

A. It was prior to May 1st, the last part of April, I would say.

Q. And where did the discussion take place in Los Angeles?

A. In his office at Beverly Hills.

Q. Who was there?

A. Myself and hisself.

Q. What was said and by whom regarding this warehousing arrangement on that occasion?

A. Well, we agreed to set it up; that I was to call Mr. Uhrich, and have him come from Douglass Guardian and inventory the stock and trade at the warehouse at that time and to put it into inventory; and we were to bring the warehouse receipts to Los Angeles, or he was to forward them to Los Angeles.

Q. Who suggested this warehousing arrange-

(Testimony of George F. Elliff.)

ment?           A. Possibly I did, I presume.

Q. Was anything said in that conversation regarding the occasion for the warehousing arrangement?

A. May I have that again, Mr. Jacobs?

Q. Was anything said on the occasion of this discussion in Los Angeles that you have just referred to regarding the occasion, the purpose, the object, the reason for having a warehousing arrangement?

A. Well, it was a case of protecting Mr. Hunter because we were delinquent in our bills, and also to expand the business somewhat. [21]

Q. Now, who said this?

A. It wasn't a question of saying; he was demanding that we pay up.

Q. He was demanding that you pay up. And in response to this—is this a correct statement—in response to this demand, you offered this warehousing arrangement?           A. That's right, sir.

Q. As security for what?

A. For the money we owed him.

Q. Now, what account were you operating under; what sort of an account, at the time that this warehousing arrangement was set up?

A. You mean the name?

Q. Yes. What would you call it?

A. Abbott-Lane Pine Supply, I believe.

Q. Was it an open account?           A. Yes.

Mr. Shapro: I object to the question. It calls



(Testimony of George F. Elliff.)

for the opinion and conclusion of the witness, was it an open account.

The Court: Well, I think that is a description the witness can give. By "an open account" you mean it was unsecured?

The Witness: It was an open account.

The Court: What? [22]

The Witness: It was an open account.

The Court: And by an open account you mean an unsecured account?

The Witness: That's right, sir.

Q. (By Mr. Jacobs): Now, after this warehousing—when this arrangement was set up, was there any discussion as to the use of this arrangement and the warehouse receipts that were to be issued under it as security for any other account and the account you were operating at that time?

Mr. Shapro: I object to that question, if your Honor please. It is an attempt to vary a written instrument by parole. That document which is Plaintiff's Exhibit No. 1 is an agreement between the parties, and was accepted by the witness. Any discussions prior to that or understandings will be merged in the written instrument.

The Court: What are you asking for: this discussion prior to the date of this letter, or subsequent to it?

Mr. Jacobs: Subsequent to it, your Honor, at the time when this warehouse arrangement actually went into effect.

Mr. Shapro: If your Honor please, he is asking

(Testimony of George F. Elliff.)

questions with respect to conversations after the written instrument was entered into. We object upon the ground it calls for hearsay and it is an attempt to vary a written instrument by parole.

Mr. Jacobs: It isn't an attempt to vary a [23] written instrument at all. It's an attempt to see if the——

The Court: I think I will permit the discussion. We will find out what it was.

Q. (By Mr. Jacobs): Was anything said about that?

A. Yes. It was openly discussed.

The Court: When did you have any conversation after?

The Witness: It was prior.

The Court: What?

The Witness: It was prior to that, sir.

The Court: It was prior to that?

The Witness: Yes.

Q. (By Mr. Jacobs): Oh. Now, am I correct in understanding that there was no discussion in that regard after these letters were received?

A. It was part of the agreement that we would throw everything that was in the warehouse, whether it came from Twin City or other sources, under warehouse receipts.

The Court: That I don't understand.

The Witness: We had purchased lumber from other firms besides Twin City which we had in the warehouse—I mean, which we had in stock at the Pine Supply Company. But under this warehous-

(Testimony of George F. Elliff.)

ing arrangement, if Mr. Hunter took it over and carried our warehouse receipts, everything purchased from him or anyone else was to go under warehouse receipts.

The Court: Well, who had the warehouse receipts? [24]

The Witness: He did.

The Court: Why wasn't it discussed in the letter?

The Witness: It wasn't discussed in the letter. It was discussed prior to the letters that everything in the warehouse would be under warehouse receipts which he would carry and advance 70 per cent on.

Mr. Shapro: If your Honor please, we move to strike the testimony of the witness with respect to the understanding as to include anything but what was covered by the letter upon the ground that the agreements are merged in the written instrument.

Mr. Jacobs: Well, the behavior of the parties, the actions of the parties subsequent to the receipt of these letters is very illuminating as to what their actual understanding was. It may have rested partly in parole, if your Honor please.

Mr. Shapro: The actions of the parties, yes, but we haven't got to actions, we are talking about conversations, if your Honor please.

Mr. Jacobs: Well, conversations explain what they did.

The Court: Well, this letter shows that there

(Testimony of George F. Elliff.)

was a statement attached thereto. Is there some other part of this letter that we don't have?

Mr. Shapro: Plaintiff's Exhibit 2, your Honor, is the enclosure, Plaintiff's Exhibit 2, May 6th letter to the Guardian Warehouse. [25]

Mr. Jacobs: Despite the difference in dates, I believe counsel's statement is correct.

The Court: In other words, Plaintiff's Exhibit 2, which is dated May 6th, was enclosed with the letter of May 4th?

The Witness: Yes. And I believe there was another copy of this which I returned, signed and returned to Mr. Hunter. Is that correct?

Mr. Shapro: That is right, we have it.

The Court: That is an extra copy, according to that, of the letter of May 4th which you returned, according to the letter?

The Witness: I had it signed and returned.

The Court: Yes. This is a copy of the letter of May 4th. But what I am calling your attention to is the fact that the letter is dated May 4th and you say this letter dated May 6th was enclosed as an enclosure with that letter?

The Witness: I can't honestly say. I know they came in about the same time at the office. But there was quite a bit of material in this letter.

Mr. Jacobs: It does seem that the letter of May 4th was not mailed on the date that it bears and apparently it was held up until this other letter had been prepared, and then a carbon was put in.

(Testimony of George F. Elliff.)

That seems to be the situation, your Honor. I am surmising.

Mr. Shapro: That is our understanding of the facts, as [26] well, your Honor.

Q. (By Mr. Jacobs): I believe counsel is correct.

Now, Mr. Elliff——

Mr. Shapro: May I have a ruling from the Court on the motion to strike, your Honor?

The Court: Well, at the moment, the motion to strike may be denied. This letter itself is not all inclusive of what might have been there. It says, "To confirm our agreement of yesterday, please be advised as follows. We will advance you 70 per cent of our invoice price on all lumber, moldings, plywood and door jambs purchased from us."

Mr. Shapro: Right.

The Court: He doesn't talk about anything else.

Mr. Shapro: That is right. And that is the reason why, your Honor, I am urging that objection, namely, that any conversations that may have taken place between the witness and Mr. Hunter prior to the agreement in question, which is the document dated May 4th, 1953, are merged and would be merged as a matter of law in the written instrument. And as the witness has told your Honor, we have the copy of this May 4th letter signed by the witness. It was returned to us signed by him. So it has become, in effect, an agreement.

Mr. Jacobs: It isn't an all inclusive agreement. It doesn't purport to be such. And if there was



(Testimony of George F. Elliff.)

another understanding collateral to it, which agreement is entirely [27] consistent, that certainly is competent to show that collateral agreement.

Now, the witness' testimony seems to be that there was further understanding, although Mr. Hunter neglected to mention it in his letter, to the effect that all of the merchandise belonged—all of the stock in trade of Abbott-Lane or Pine Supply Company, whichever it was—it was all a partnership—should be put under this warehousing agreement; and if that is the case, I think the Court ought to know it.

The Court: If there was such an agreement, I am willing to hear about it. But I would like to find out when it was and where it was and what they are trying it for, because we haven't got it.

Q. (By Mr. Jacobs): We will try and supply it.

Mr. Elliff, what conversation, and I mean on what occasion, did this conversation occur that I related to the deposit under the warehouse agreement of the entire stock in trade as you have mentioned?

A. It was prior to the writing of this letter because at the writing of this letter all stock in trade was in the warehouse as of Friday, which Mr. Hunter had deposited the warehouse receipts.

Q. The entire stock in trade? A. Right.

Q. What did that include in reference to the sources of it? [28]

(Testimony of George F. Elliff.)

A. It included everything that was possessed by Pine Supply Company.

Q. Everything you had? A. Yes.

The Court: When did that go in the warehouse?

The Witness: Prior to the writing of this letter.

The Court: When, how long prior?

The Witness: I was in Los Angeles. He speaks of yesterday; that would have been Sunday, May 3rd. So it was May 1st, I presume. It was on Friday, May 1st.

The Court: What happened on Friday, May 1st?

The Witness: The Douglass Guardian Warehouse people inventoried the stock in trade of Pine Supply and wrote out warehouse receipts which Mr. Hodes and I endorsed over to Douglass Guardian Warehouse Corporation.

The Court: The actual warehouse receipts were given to Twin City on May 1st?

The Witness: To Douglass Guardian on May 1st.

The Court: I lost you there. I thought you said they were given to Twin City.

The Witness: In turn, he was in turn to transfer them to Twin City.

The Court: For how long a time had your stock of merchandise been in any warehouse where there was a receipt issued? [29]

The Witness: Concerning this letter?

The Court: What?

The Witness: Back to concerning this letter?

The Court: The letter wasn't written on May 1st. I am asking you——

(Testimony of George F. Elliff.)

The Witness: May 1st, three days it had been warehouse receipts, three days.

The Court: How did it get in any warehouse? When was it delivered there and by whom?

The Witness: It was there already. I mean a warehouse doesn't have to be there. It could be out in the field some place.

Mr. Shapro: May I make an observation? A field—what is called a field warehouse was set up in Mr. Elliff's premises by the Douglass Guardian Warehouse on or about May 1st, 1953. A field warehouse, if I may suggest—your Honor, are you familiar with it?

The Court: No, I am not.

Mr. Shapro: A field warehouse is this: It is used by warehouse—by public warehouse companies under the Warehouse Receipts Act of California to designate and set apart in the premises of the original owner merchandise property segregated into the possession of a warehouse company, which under the statute may then issue a warehouse receipt.

What they do physically, they take a man's premises, such [30] as this, they fence it off, they put up a wire fence with a lock, they put a warehouseman in charge, and everything that goes inside there is covered by warehouse receipts and is in possession of the warehouse company.

Everything that doesn't go in, is in the possession of the operator of the business. That is what is commonly called a field warehouse.

(Testimony of George F. Elliff.)

The Court: That is your understanding?

Mr. Shapro: That is right, yes, your Honor.

The Court: Is that your understanding of it?

The Witness: Yes, sir.

Q. (By the Court): So that on May 1st there was an arrangement made whereby the stock in trade of your company was placed within a separate enclosure under the custody of Douglass Guardian?

The Witness: That is right, sir.

The Court: And that was all the stock and merchandise that you then had?

The Witness: That's right, sir.

Q. (By Mr. Jacobs): And just roughly, Mr. Elliff, what percentage of that merchandise had been purchased from other sources than Douglass Guardian Warehouse?

Mr. Shapro: You don't mean that; you mean Twin City.

Q. (By Mr. Jacobs): I mean other than Twin City that you——

A. Oh, I would say roughly in the neighborhood of half [31] had been purchased outside of Twin City.

Q. All right, sir.

A. Dollarwise, not in volume, but dollarwise.

Q. Dollarwise. Now, did you receive any correspondence from the old firm regarding the state of your account with the old firm, that is, the state of the Pine Supply Company account with the old firm subsequent to these letters?

(Testimony of George F. Elliff.)

A. It is possible. I don't remember offhand.

The Court: We will take a short recess.

(Recess.)

Q. (By Mr. Jacobs): Mr. Elliff, you have testified, as I understand it, that you did receive some, or that you may have received subsequent letters from the old firm after the letters that have gone into evidence already? A. I did, yes.

Q. Establishing this arrangement. I show you a letter on the letterhead of Twin City Lumber Company, dated May 15th, 1953, signed by Twin City Lumber Company by J. W. Hunter, and ask you whether you received that letter.

A. Yes, sir, I did.

Q. And is that Mr. Hunter's signature at the foot of the letter?

Mr. Shapro: Your Honor, I have examined all of the letters that counsel has. They were all received by him in the ordinary course. They all are authentic letters from [32] the defendant.

Mr. Jacobs: That saves a great deal of time. I thank you, counsel.

The purpose of offering that group of letters, your Honor, is to show that Twin City Lumber Company was very much dissatisfied with the status of the account. The letters — the letter of May 15th——

The Court: 13th?

Mr. Jacobs: 15th, sir; that was just prior to the dissolution; the letter of May 28th, that was just at the time of the dissolution or immediately



(Testimony of George F. Elliff.)

after it. June 5th, June 17th, another of June 17th, and a letter of September 21, 1953, all of 1953, all signed by Mr. Hunter.

They speak of themselves, and I offer them in as a group.

The Court: The six letters may be admitted and marked.

(Whereupon the foregoing six letters was marked Plaintiff's Exhibit No. 3 and received in evidence.)

Mr. Jacobs: Let me say, of course, the red underscoring in those letters is mine, your Honor. I did not at the time have any idea that I was going to have to introduce them in evidence.

Q. Mr. Elliff, was Mr. Hunter the only person with whom you dealt in doing business with the old firm subsequent to the dissolution of the partnership? A. No, sir. [33]

Q. Who else did you deal with in dealing with the old firm, what other individuals?

A. Mr. Howard Collins and Mr. William Ramsey.

Q. What, if you know, was their position in it?

A. I was given to understand that they were partners.

Q. I see. Now, did you have any conversations with Mr. Hunter or either of the two gentlemen you have just mentioned, subsequent to the dissolution of the partnership, regarding your financial affairs? A. Only Mr. Hunter, I would say.

Q. Only Mr. Hunter?

(Testimony of George F. Elliff.)

A. Only Mr. Hunter.

Q. What conversation did you have with him subsequent to May 15th?

A. It was the time I proposed the warehouse, the Douglass Guardian.

Q. No. I mean subsequent to that conversation, Mr. Elliff, did you have any with him after that?

A. After that?

Q. Yes.           A. Yes, sir.

Q. And when did that take place?

A. I am relying on my memory here. I believe it was in August of '53.

Q. And where did that take place? [34]

A. At Twin City Lumber Company's office on Market Street here in San Francisco.

Q. Now, who was present there?

A. Mr. Hunter, I believe Mr. Ramsey was out of the office at that time, and Mr. Collins,—I am not certain—and Mr. Joel Baum.

Q. What was Mr. Baum's relation to you, Mr. Elliff?

A. He is a certified public accountant and was making an audit of the dissolution and of Pine Supply as it stood at that time.

Q. Was he your auditor?           A. Yes, sir.

Q. Of your business, I mean?           A. Yes, sir.

Q. And what was said and by whom on that occasion regarding your financial condition?

A. We had—I had gone to Mr. Hunter to request him to work out a more workable agreement than what we were working under, and more or

(Testimony of George F. Elliff.)

less relate to him the circumstances of the company at that time. His answer was that he would think it over. He was on his way to Canada, and think it over and give him an answer at a later date on his return.

The Court: Mr. Elliff, now please give us what was said. Substantially, what did you tell him about your financial condition, if you told him anything?

The Witness: I told him it wasn't good, which he was quite aware of.

The Court: What did you tell him, please, about the financial condition? That is the question now.

The Witness: I answered it before by saying that I told him about the circumstances of the company.

The Court: That doesn't mean anything to me. I want to find out what you told him.

The Witness: Well, I was complaining about the interest rates that we were paying and asked him to assist us, which he answered he would think over. I turned more or less the facts of the case——

The Court: What?

The Witness: Of finances, the assets, the liabilities, the delinquent payments——

The Court: What did you tell him, please, Mr. Elliff? That is what I am trying to find out.

Q. (By Mr. Jacobs): What did you tell him the assets were, what did you tell him the liabilities were?

A. I can't recall that because Mr. Baum had the figures on it.

(Testimony of George F. Elliff.)

Q. Did Mr. Baum present this information to Mr. Hunter on that occasion?

A. Verbally, yes.

Q. Verbally. Now, how was this information compiled, Mr. Elliff? [36] Did you assist in compiling it? A. Yes, sir.

Q. And state whether or not it was—as to the correctness of the information, what can you tell us?

A. It was as accurate as we could actually place it.

Q. I see. Now——

The Court: Do you expect to develop what was this by another witness?

Mr. Jacobs: Yes, your Honor. I am just laying the foundation of it.

The Court: I want to call your attention to the fact that I haven't got it from the witness.

Mr. Jacobs: I understand that, your Honor.

Q. Can you give it to us, Mr. Elliff?

A. Well, we discussed the accounts receivable in dollars and cents. What they were, I don't recall. Somewhere around \$17,000.00, I believe, at that time. We discussed the money that we owed Twin City on releases that were delinquent. We discussed the factory setup wherein I could sell the paper and in turn convert it to cash, which would facilitate me paying Mr. Hunter that much faster, which he was very definitely interested in, because he couldn't see how he could survive, and he stated so, without it, because I couldn't afford to carry

(Testimony of George F. Elliff.)

the accounts receivable. I didn't have that kind of capital. It was of great concern, both to myself [37] and Mr. Hunter. It was discussed at great length at that time.

Q. And was any mention made of what the net worth of the business was?

A. I believe Mr. Hunter requested that and Mr. Baum and I both agreed that we would give it to him in writing at the time he returned from Canada.

Q. Did you ever do that?

A. I believe the end came too fast for us to ever get a complete report to him.

Q. In other words, you did not do it, is that right?

A. I don't recall ever giving it to him in writing, no, sir.

Q. Now, do you know at the present time what the total amount in money of the assets—of the value of the assets of that business were at that time?

Mr. Shapro: May I have the question read, if your Honor please?

The Court: Read the question.

(Question read by reporter.)

Mr. Shapro: I object to that question upon the ground it calls for the opinion and conclusion of the witness, your Honor. We haven't found out what the assets were yet.

The Court: Do you mean the book value, counsel?



(Testimony of George F. Elliff.)

Mr. Jacobs: Yes, your Honor, that is exactly what I mean.

The Court: Or value, his purchase price, is that what you mean? [38]

Mr. Jacobs: Yes. I think that would be the book value of it.

Q. You kept your books on a purchase basis, didn't you?      A. We did.

Q. Do you know what the total assets added up to?

The Court: The objection may be overruled to his question. Go ahead.

A. It hasn't improved any since the time the first audit was made, as I recall.

Q. (By Mr. Jacobs): Well, that isn't exactly the question. Do you know what the amount was?

A. No, sir, I don't.

Q. Can you give it to us in round figures, approximately?

A. I would be something if I did.

Q. I see. All right. We'll have to get it from Mr. Baum, then.

Now, Mr. Hunter subsequently returned from Canada, I think you said, and did you have a conference with him after his return?

A. Only a letter, I believe.

Q. A letter from him?

A. From him, yes, sir.

Mr. Jacobs: I think that may be one of the letters that I have just introduced, your Honor.

(Testimony of George F. Elliff.)

The Court: I have not had an opportunity to read those.

Mr. Jacobs: Of course not.

Q. Do you recall the approximate date of the letter that you have just referred to?

A. It would have to be in the latter part of August or the first of September.

Q. I will show you this letter which is a part of Plaintiff's Exhibit 3 and dated September 21, 1953, and ask you if that is the letter that we have just referred to?

A. May I have time to read it?

The Court: Yes.

The Witness: Yes, sir, I believe this is the letter.

Q. (By Mr. Jacobs): In other words, the letter that you have referred to is a letter included in Plaintiff's Exhibit 3 which was dated September 21st, is that right?

A. That is the letter, that is right.

Mr. Jacobs: That is the last of that group of letters, your Honor. It speaks for itself.

The Court: Very well.

Q. (By Mr. Jacobs): Mr. Elliff, I direct your attention to the time about the end of August, 1953, and I ask you to tell us what was the basis of your dealings with the Twin City Company, I mean the old firm, at that time; what accounts did you carry with them?

The Court: What accounts? [40]

Q. (By Mr. Jacobs): What account or accounts?

(Testimony of George F. Elliff.)

Mr. Shapro: I object to that question on the ground it calls for the opinion and conclusion of the witness.

The Court: I don't quite understand the witness. "What accounts did you carry with Twin City?"

Mr. Jacobs: Yes, he had an open account.

Q. Did you have any other, that is what I am driving at?      A. Warehouse account.

Q. You had a warehouse account and an open account?

A. Correct. Well, they were actually basically one and the same.

Q. I see. Now, at that time, up to that point, how had you made your payments to Twin City Company, in what form?

A. I would order lumber. They would ship lumber. They would take the total amounts of that invoice and credit me with 70 per cent. I, in turn, had 30 days to pay them the 30 per cent.

Q. And how did you make the payment when payment was made?      A. By check.

Q. By check. Drawn on the Pine Supply Company account?      A. Yes, sir.

Q. (By the Court): What happened to the 70 per cent?

A. Then as we would release the materials from the warehouses, for shipment to customers, when we reached the total of \$2,000.00 released on purchase price, not on sales price, [41] I was to forward the \$2,000.00, or whatever the weekly release

(Testimony of George F. Elliff.)

money would be—it would be one or two—to Twin City Company.

Mr. Shapro: Your Honor, that is not responsive to your Honor's question which was: What happened to the 70 per cent?

The Witness: It became the property of Twin City Company.

Q. (By the Court): What became the property of Twin City? A. The 70 per cent.

The Court: Well——

The Witness: But how I repaid it: I thought that is what you wanted to know.

The Court: Let's say there is an invoice of \$1,000.00, you paid them \$300.00 on that invoice?

The Witness: That's right.

The Court: And you owed them \$700.00?

The Witness: Right, sir.

The Court: Well, now, how was that \$700.00 charged against you? Were you billed for it and you paid it whenever you resold the lumber out of the warehouse; is that what you mean?

The Witness: That is exactly what I mean, sir. It was invoiced at 30 per cent at the time of the invoice that they had a copy of. It would be very easy to explain. At the top of the invoice it would explain that 30 per cent was due in 30 days and 70 per cent was to be written on warehouse receipts. [42]

The Court: And it was to be paid upon release from the warehouse when you sold the customer, is that what you mean?

(Testimony of George F. Elliff.)

The Witness: That is exactly right.

The Court: And you made them full—or, that is, if you took \$2,000.00 out, you paid \$2,000.00?

The Witness: Right, sir.

Mr. Jacobs: This will be much clearer when we get these exhibits in evidence, your Honor. But at the present time, to clarify the witness' testimony, I will show him some photostats of specimen invoices.

Q. I am showing you, Mr. Elliff, a photostat of what purports to be an invoice of Twin City Lumber Company, by purporting to be sold to Pine Supply Company, Ponderosa pine rough. Is that a fair specimen of the invoices which you have just referred to? A. That is a fair specimen.

Q. And did they all come to you with the notations written in, "30 per cent cash advance 10 days after receipt papers, balance in accordance with warehousing agreement"?

A. That is right, sir.

Q. Is that right? A. They did.

Mr. Jacobs: We will ask that this be marked for identification at the present time, your Honor. I am going [43] to offer it as a whole.

The Court: It may be admitted.

(Whereupon the foregoing document was marked Plaintiff's Exhibit No. 4 for identification.)

Q. (By Mr. Jacobs): Were all of the checks that you have mentioned paid on presentation?

A. No.



(Testimony of George F. Elliff.)

The Court: Read that question. I didn't hear it.

(Question read.)

Q. (By Mr. Jacobs): Referring to the period during which the Pine Supply Company was doing business under that name down to say the 6th of October, 1953, how many of the checks, or rather what was the amount, if you can tell us, of the checks that you gave the old firm that were not paid on presentation?

A. Will round figures be satisfactory?

Q. Yes. A. Roughly \$10,000.00.

Q. What became of those checks?

A. After the signing of the trustee agreement, they were to return them, but I have never seen them since.

Q. Now, you speak of the trustee agreement. Did you have a conference with Mr. Ramsey in the office of the Pine Supply Company at San Jose at or about the end of August, 1953?

A. September, I believe, sir; yes, I did.

Q. About early in September. Can you give us [44] the approximate date?

A. It was two weeks prior to the signing of the trustee agreement. That is as near as I can give you.

Q. I see. And who was present on that occasion?

A. Mr. Ramsey, myself and Mr. Baum, I believe.

Q. And on that occasion, what was said and by whom regarding the status of your account with the old firm?

(Testimony of George F. Elliff.)

A. Mr. Ramsey had been sent as an agent of Twin City Company to examine the books and the accounts receivable and the inventory of Pine Supply.

Q. Did he say so?

A. Yes, I believe he did.

Q. And did he do so?           A. He did.

Q. Now, were you and Mr. Baum present when he did so?

A. Absolutely. We assisted him.

Q. What did he actually examine of your records on that occasion?

A. Well, we opened it entirely to him. I mean all the accounts receivable ledger, accounts payable, and general status of the financial situation of the Pine Supply Company as a whole.

Q. Did your accounts payable report the names of all of your creditors?

A. Yes. It was very accurate. [45]

Q. That is of the creditors having to do with the business?           A. Yes.

Q. Now, did you at that time have other creditors who were not involved in that business; I mean, who weren't creditors because of their business dealings with you under the name of Pine Supply Company?

A. I personally had creditors, yes.

Q. That is what I mean. Who would that be?

Mr. Shapro: I object, if your Honor please, no proper foundation has been laid, namely, that the declaration of these other creditors was made in

(Testimony of George F. Elliff.)

the presence of the defendant who at that time was represented by Mr. Ramsey.

Mr. Jacobs: I don't understand——

The Court: The question of insolvency or not, doesn't the question of all his creditors come in?

Mr. Shapro: I understood that the purpose of his question was to show knowledge of insolvency.

Mr. Jacobs: We are showing knowledge of a part of the information. We have to show that they knew it all.

Mr. Shapro: If it was only for the purpose of showing insolvency, I will withdraw the objection.

Mr. Jacobs: It is for the purpose of showing that, and it is for the purpose of showing that there were creditors at the time of the bankruptcy.

Q. Are these personal creditors that you have referred to? [46]

A. Well, banks——

The Court: What?

A. I had a note at the bank. I was building a house. I had numerous amounts owed by sub-contractors. I owed some money in regards to Coast Range Lumber Company.

The Court: I didn't get that last.

A. Coast Range Lumber Company.

The Court: Who did you owe on that one to?

A. To Charles Lannon.

Q. (By Mr. Jacobs): Is he the man you mentioned before who was present at the conference that you have just referred to in Mr. Hunter's office in Los Angeles?

A. Yes, sir.

Q. How about Mrs. Lannon?

(Testimony of George F. Elliff.)

A. Mrs. Lannon, yes, sir.

Q. What did you owe her in round figures at that time?

A. I couldn't honestly tell you, but it was in excess of, I'd say, of \$12,000.00.

Q. (By the Court): Was that represented by any writing? A. Yes, sir.

Q. Well, what writing?

A. I had signed a note.

Q. You had to sign notes in the amount of \$12,000.00? A. Or better.

Q. (By Mr. Jacobs): Part of that was secured, was it not? [47]

A. At that time, in September?

Q. Yes.

A. Yes, by the property on Mount Hamilton Road.

Q. And was it all secured?

A. The security wouldn't warrant the amount.

Q. You mean that the property wasn't sufficient to secure it all? A. No.

Q. Now, did you have any conversation with Mr. Ramsey at that time regarding what action, if any, the old firm was going to take?

A. Yes, I did.

Q. Give us the substance of that conversation.

A. Well, it went on for a week, Mr. Jacobs, these conversations. Finally I was told to lock the warehouse.

Q. Who told you that? A. By Mr. Ramsey.

Q. Well, give us the substance of the conversa-

(Testimony of George F. Elliff.)

tion that you had with Mr. Ramsey on that occasion.

Mr. Shapro: Which occasion, at the meeting in his office?

Q. (By Mr. Jacobs): Let us say in the course of these daily conversations extending over a period of a week, can you distinguish between them?

A. That particular one I can, because it was pretty disturbing, that is, the final analysis of everything we [48] discussed during the week. And he told me to lock the warehouse and there was a question of some checks they were holding. And we went to the bank, I believe, on that particular occasion and it was there that I offered him the keys to the warehouse.

Q. What bank are you referring to?

A. The Hester Branch, Bank of America.

Q. Did anybody go with you?

A. Mr. Baum was present at that time.

Q. I see. Was there any discussion on that occasion or any of these previous occasions that you have just referred to regarding the new arrangement with the Twin City Company?

A. I stated to Mr. Ramsey that I could not continue to operate under the domination of Twin City. Something would have to be done.

Q. And what was his reply?

A. He said that they didn't want—I told him that as far as I was concerned, that any——

The Court: I can't understand you. Keep your voice up.



(Testimony of George F. Elliff.)

A. I told him that as far as I was concerned, that Twin City Company were in the wholesaling——

Q. (By Mr. Jacobs): Again I ask you what was his reply?

A. He stated that they weren't interested in being in the wholesale—in that particular phase, in the wholesale lumber, but not in small quantities.

Q. Did he make any suggestion to you?

A. No, not on that occasion.

Q. Was there any discussion about a new arrangement on that, or any occasion that you have referred to already in the course of these conversations?

A. Not at that—not at that particular meeting in front of the bank, no.

The Court: Let's take a recess at this time.

May I ask if counsel has any idea as to how long this case will take?

Mr. Jacobs: I have estimated, your Honor, three days. I still think the estimate is pretty good.

The Court: Three days. What do you think?

Mr. Shapro: In view of the fact that we haven't completed the testimony of Mr. Elliff, I am forced to agree with counsel. It is a blow to my optimism, your Honor. I had hoped it could be disposed of in two.

The Court: All right.

Mr. Jacobs: I will guarantee speed as far as we can give it to your Honor without leaving out the crux of our case.

The Court: You can't rely on a guarantee of that kind very much.

Mr. Jacobs: In other words, we will do our best.

The Court: All right. Two o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of this day.) [50]

Afternoon Session—2:00 O'Clock P.M.

Mr. Jacobs: If your Honor please, there are three attorneys here and they all have full calendars for tomorrow. If the other parties have no objection—I understand opposing counsel has none—I would like to call them out of order so that they can get away.

The Court: Very well.

## HENRY ROBIDOUX

called as a witness on behalf of the plaintiff, sworn.

### Direct Examination

The Court: State your name, please.

The Witness: My name is Henry Robidoux.

Q. (By Mr. Jacobs): And you are a member of the State Bar of California? A. I am.

Q. And were such throughout October of 1953?

A. I was.

Q. Were you employed during that month or thereabouts as attorney for Mrs. Pearl K. Lannin?

A. I was.

Q. In what connection?

A. I was employed by Mrs. Lannin to examine some papers and advise her in connection with a

(Testimony of Henry Robidoux.)

matter of her signing or guaranteeing a promissory note that was to be signed by her [51] son-in-law, Mr. Elliff.

Q. And to whom was the note made payable, do you know?

A. Twin City Lumber Company, as I recall.

Q. And were there any other documents involved in that transaction, as you now recall?

A. Yes. There was a promissory note that Elliff and his wife were to sign and in which Mrs. Lannin, as I recall, was to guarantee. There was an agreement, a trustee agreement, to accompany that. And then there were some warehouse receipts to be assigned to Mrs. Lannin.

Q. Now, what were you employed to do precisely?

A. To examine the note, to examine the trust agreement, and to advise Mrs. Lannin regarding her position in signing this promissory note.

Q. And when were you so employed, Mr. Robidoux?

A. Well, I don't recall the exact date. My best recollection is that it was just shortly a day or two, or maybe three days before the date that the note would bear or the trustee agreement. As I recall, the period of the employment before the executing of the papers was just a short time, two or three days, only.

Q. Now, did you give her the advice that you were employed to give?

A. I gave her advice, yes.

(Testimony of Henry Robidoux.)

Q. And preliminary to giving her the advice, did you examine the documents? [52]

A. I did.

Q. And what other, if any, investigation did you make?

A. Mr. Louis Pasquinelli, an attorney in San Jose, represented Mr. Elliff. Mr. Elliff had an accountant, I believe his name was Baum, I believe it was. I knew Mr. Pasquinelli very well. I inquired of him as to what assets the Pine Lumber Company—that was the name that Mr. Elliff was doing business under, as I recall.

Q. Pine Supply Company?

A. Pine Supply Company, as to what assets Pine Supply Company had.

Q. And did you inquire also regarding liabilities? A. I did.

Q. And what information did you receive?

Mr. Shapro: Just a moment. I object to that question, if your Honor please, on the ground it calls for hearsay, no proper foundation has been laid showing that the defendant, Twin City Lumber Company, was in any way present or represented in connection with this conference.

Mr. Jacobs: Our theory in that regard, your Honor, is simply this: that if these people—of course, we have not made the connecting proof and we will make it—our contention is that this entire transaction was concerted between Twin City Lumber Company and the bankrupt. And that what was said [53] by the bankrupt's attorney consequently

(Testimony of Henry Robidoux.)

was as much a part of this alleged fraud as what was said by any representative of the Twin City Company itself. If we are successful in showing that they did concert this plan, then I respectfully submit that the information that he received from Twin City Company—from the bankrupt's attorney—is material to this cause of action.

Mr. Shapro: Your Honor, but he is jumping the gun. Our objection is based upon the ground, if your Honor please, that no proper foundation has been laid. Now, was this witness called upon to testify what the attorney for Mr. Elliff told him not in the presence of any representative of Twin City Lumber Company?

Mr. Jacobs: I will have to admit that we have not had the opportunity to lay the foundation because we are calling this witness out of order. I would ask this: that the testimony be received subject to our connecting it up in that manner.

Mr. Shapro: Your Honor, this is such a vital part of an accusation, the charge of fraud in this case, that I respectfully submit that we are entitled to have the proof in an *orderly with* respect to at least the foundation.

Now, it is possible, perhaps, that the foundation, if any, may be laid by others than that witness—and he *may the* last of the three lawyers instead of the first, I don't know—but when I agreed that these witnesses be called out of order, [54] I did not waive any right to require orderly proof of the evidence from the witness himself.



(Testimony of Henry Robidoux.)

Mr. Jacobs: We don't dispute counsel's statement that the proper foundation has not been laid, your Honor. I do think that it may be appropriate to take the witness' testimony and then—there is no jury here—and the Court will naturally disregard it if the Court finds it incompetent, or it can be stricken out. We make no objection unless the proper foundation has been laid. We think we have the evidence with which to lay it. I did want to avoid the necessity of calling Mr. Robidoux. I had expected Mr. Elliff——

The Court: I would prefer to have it in the proper order. But, by reason of the fact that the counsel is here from San Jose, I would like to consult his convenience. Also, it might be that such testimony as might be later found to be proper, if it was connected up, might be received subject to a motion to strike. I will receive it on that basis.

Mr. Jacobs: Thank you, sir.

Q. Now, may we have your answer to that question, Mr. Robidoux, what information was given to you when you called on Mr. Pasquinelli? What information did Mr. Pasquinelli give you in regard to the condition that is concerned?

A. May I refer to some notes that I made at that time?

Q. If you need to prompt your memory.

A. The information I received at that time was that the [55] Pine Supply Company had accounts receivable in the neighborhood of \$24,798.80.

The Court: Give me that figure again.

(Testimony of Henry Robidoux.)

A. \$24,798.80. I was also given the information that the inventory amounted to around \$24,492.00. That was figured at cost. And I was given to understand that the accounts payable amounted to around \$11,000.00. And then taking into consideration this \$28,000.00 note, it would fix the liabilities at around \$39,000.00.

Q. (By Mr. Jacobs): I think you have already said that you did examine the trust agreement as well as the note before you gave your advice to your client?

A. I examined the trust agreement, as I remember. As I remember, the trust agreement was prepared in Mr. Pasquinelli's office and I examined it in his office. It was late in the afternoon and it was being prepared. I went to his office and examined it there.

Q. What was subsequently done with it, if you know?

A. I examined the trust agreement and as I recall, I went—I took the trust agreement and the note to Mrs. Lannin's residence late that afternoon, which was evening, really, around 5:00 o'clock or so. There I went over the documents with her and as I recall she signed them there.

Q. Have you told us the entire investigation that you made?

A. Well, I knew little or nothing about warehouse receipts. [56] I made some inquiries about warehouse receipts and how they were handled. I think that is about all the investigation that I made.

(Testimony of Henry Robidoux.)

I discussed the matter with Mr. Elliff. I believe I also discussed the matter with the accountant also there at Pasquinelli's office.

Q. Other than what you have told us, did you get any information from them?

A. Other than from them?

Q. Yes, other than what you have already told us.

A. No.

Mr. Jacobs: Take the witness.

### Cross Examination

Q. (By Mr. Shapro): Mr. Robidoux, in addition to the services that you have testified to that you rendered for Mrs. Lannin, you also advised her in connection with certain payments that were made on this \$28,000.00 note, did you not?

A. After the discussion of the note, yes.

Q. And it is true, isn't it, Mr. Robidoux, that Twin City Lumber Company was not a party to the trust agreement that you have referred to as having been examined by you?

Mr. Jacobs: This document speaks for itself, if your Honor please. That is the best evidence.

The Court: I think it is proper examination at this time.

The Witness: I haven't seen the trust agreement in a long, long while. But as I recall, Twin City was not a party [57] to it, as I recall.

Q. (By Mr. Shapro): Do you recall, Mr. Robidoux, whether or not warehouse receipts on certain lumber were issued to and delivered to Mrs. Lannin

(Testimony of Henry Robidoux.)

at or shortly after the execution by her of the guarantee on the note and her execution of the trust agreement?

A. The warehouse receipts, as I recall, were delivered, yes.

Q. Mr. Robidoux, I show you what purports to be a letter on your letterhead dated August 25, 1954, and ask you whether or not you wrote that letter to Mr. Hunter at an address he named there?

Mr. Jacobs: If your Honor please, unless we be remiss in making our objection, this letter which I have just examined is not within the scope of the direct examination. I presume the witness knows the answers to these questions, but I want the record kept clear that this is not within the scope of the direct examination. I am objecting to it on that ground.

Mr. Shapro: I think the only way to do this is to examine the document.

Mr. Jacobs: I believe that is true.

Mr. Shapro: His Honor might just as well look at both of them, then.

The Witness: I did.

The Court: Likewise, the first two letters, the one August 25th, 1954, and one August 26th, 1954, did you write both [58] letters?

The Witness: I didn't see the second letter, Judge, but it's on my letterhead, it's my signature.

Mr. Jacobs: Your Honor will see the force of my objection. It has nothing to do with this case and I didn't want it to be part of the trustee case.

(Testimony of Henry Robidoux.)

The Witness: Yes, I wrote this letter dated August 26th also.

Mr. Shapro: Your Honor, the relevancy of those letters, if I may address the Court at this time at this particular point, the second question I asked the witness was: whether or not he gave Mrs. Lannin advice other than that to which he testified on direct examination. That question was answered in the affirmative. There is a charge in both the cross-complaint and in the complaint that Mrs. Lannin was ignorant of the situation of the bankruptcy until after the bankruptcy.

Both of those letters, if your Honor will note, were written and indicate payments made by her after bankruptcy. That is the purpose of the evidence.

The Court: Well, I take it that it is not proper cross-examination at this time, but neither is the testimony at this time. We were admitting it in order to consult the convenience of Mr. Robidoux. So I think within the discretion of the Court I will admit these letters at this time even though they are out of order. They may be introduced as one Exhibit, as defendant's Exhibit A. [59]

(Thereupon the foregoing documents were introduced as Defendant's Exhibit A.)

Mr. Shapro: I have no further questions.

### Redirect Examination

Mr. Robert Jacobs: In order to save time, your



(Testimony of Henry Robidoux.)

Honor, I would like to ask the witness some questions as the witness of Pearl K. Lannin.

Q. Mr. Robidoux, you testified that there was a short time after Mrs. Lannin asked your advice that these trust agreements and note were signed, is that correct?      A. That is right.

Q. And to the best of your recollection, how much time had elapsed?

A. I would say it would be a matter of two or three days.

Q. And can you tell the Court why it was only two or three days after she consulted you that these papers were signed.

Mr. Shapro: To which question, if your Honor please, we object upon the ground it is incompetent, irrelevant and immaterial. In other words, we can't see any materiality of the question of why Mr. Robidoux had to give advice within three days instead of, say, thirty days.

Mr. Robert Jacobs: The question is because there is an allegation here of fraud. One of the parts of this allegation we believe is proved by the fact that all this transaction had to take place within a very short time; that it was at the [60] request of the defendant Twin City Lumber Company that this matter had to be taken care of in a very short time. My question opens up a lot of doors.

The Court: If you have some information he got from some source ask him about it.

Mr. Jacobs: You testified that you had conversa-

(Testimony of Henry Robidoux.)

tions with the attorney for George Elliff, the bankrupt, is that correct?

The Witness: That's correct.

Q. (By Mr. Jacobs): And in those conversations was there any discussion of any need for the fact that these things be done in a great hurry?

Mr. Shapro: To which question, if your Honor please, we object. Since this is the witness of Mrs. Lannin, we object upon the ground it is leading and suggestive and also incompetent, irrelevant and immaterial.

The Court: I am going to admit it subject to a motion to strike. We admitted part of the conversation that we received from this same attorney before. Go ahead. What were you told about—were you told anything about the time element?

The Witness: I was told.

The Court: Will you answer that yes or no.

The Witness: Yes, I was.

The Court: What were you told?

The Witness: By this attorney I was told the holder of [61] the warehouse receipts, Twin City Lumber Company, to whom Elliff owed money, was insisting that Elliff take care of his obligations. And it was a matter of time, it had to be done right away or they were going to take some action in the matter, as I understood. And it was a case of Mrs. Lannin coming to the rescue of her son-in-law.

Q. (By Mr. Robert Jacobs): Did you have a telephone conversation with the attorney for the

(Testimony of Henry Robidoux.)

bankrupt on one of the days in which this matter was being discussed?

A. Did I have a telephone conversation with the attorney for the bankrupt?

Q. Yes.           A. Yes, I did.

Q. And in those telephone conversations can you tell the Court what was said by you and what was said by the attorney for the plaintiff?

The Court: Hasn't he just given it, isn't that what you are asking?

Mr. Jacobs: Well, your Honor, he is testifying to one conversation, but whether he is testifying to all of them I am trying to find out.

The Court: Some of them may be entirely irrelevant. What are you referring to?

Q. (By Mr. Jacobs): Did you have a telephone conversation with the attorney for the bankrupt immediately prior to your [62] taking the papers which you discussed in your previous testimony out to Mrs. Lannin's house to have her sign them?

A. Yes. I received a telephone call the afternoon that I went down and got the papers. And they were preparing them that afternoon. They said they would have them ready. They couldn't bring them up to me. I said, "All right. To accommodate you since you are in such a hurry I will come down there."

The Court: Went down where?

The Witness: Went down to Mr. Pasquinelli's office on North First Street in the State Building. I went down late in the afternoon and he was just

(Testimony of Henry Robidoux.)

finishing up with the papers. Mr. Elliff was there, the accountant, Mr. Pasquinelli, his secretary. That is where I received the trust agreement, the promissory note.

Mr. Shapro: Your Honor, for the record, may it be understood that the testimony of this witness may be subject to motion to strike?

The Court: That is right.

Mr. Jacobs: You testified, Mr. Robidoux, that you advised Mrs. Lannin as to what to do in this matter. Would you tell the Court what that advice was?

Mr. Shapro: I object to that, if your Honor please upon the ground that it is self-serving and incompetent and immaterial. Here we have an attorney for a party to this [63] litigation, a cross-complainant and defendant being asked to tell the Court what advice to his client was. We object.

The Court: Well, do you think it is admissible, counsel?

Mr. Jacobs: I will withdraw the question.

That is all.

Mr. Shapro: No questions.

Mr. Huntington Jacobs: That is all. With the permission of the Court I will excuse the witness.

(Witness excused.)

TIMOTHY O'CONNOR

called as a witness by the plaintiff, sworn.

The Court: State your full name please.

The Witness: Timothy O'Connor.

(Testimony of Timothy O'Connor.)

Direct Examination

Q. (By Mr. Huntington Jacobs): Where is your office, Mr. O'Connor?

A. 275 North First Street, San Jose, California.

Q. You are a member of the State Bar, are you not?

A. Yes.

Q. And were so in October of 1953?

A. Yes.

Q. And did you during the month of October, 1953, have a conference at your office with a Mr. Ramsey and Mr. Elliff and Mr. Baum?

A. Yes.

Q. Was Mr. Pasquinelli present?

A. No, he was not.

Q. Where was he, if you know?

A. He was out of town that particular day.

Q. I see. Now——

The Court: Are you associated with Mr. Pasquinelli?

Mr. Jacobs: You were a partner of his at that time, were you not, Mr. O'Connor?

The Witness: No. I have been associated with Mr. Pasquinelli for seven years. We have never been partners.

Q. (By Mr. Jacobs): Just office associates?

A. That's right.

Q. Now what was the subject matter of this conference, what was done?

A. Well, Mr. Elliff came into the office and wanted to see Mr. Pasquinelli. One of the secretaries told him that Mr. Pasquinelli was out. So he asked if he could talk to me about the matter. And he—meaning Elliff—and Mr. Ramsey and Mr. Baum came into my office and asked me if they



(Testimony of Timothy O'Connor.)

could talk to me about this matter, about the preparation of a note and some agreement that they wanted to discuss.

Q. Did they give a name to the agreement that they wanted to discuss?

A. As I understood, it was some trust agreement.

Q. What took place at that conference? [65]

A. Well, they told me between the three of them what they intended to do. The question of the preparation of a note was discussed and the question of this trust agreement. I told Mr. Elliff that I didn't feel that I would be qualified to assist in the preparation or execution of the trust agreement because I didn't know too much about his business affairs.

At that point, it was decided that they would only make out the note and that they would come back the following day to see Mr. Pasquinelli about the trust agreement.

Q. And did you prepare a draft of the note?

A. Yes, I did.

Q. Now did you also make notes of this conference? A. Yes, I did.

Q. I show you two documents stapled together, one of which purports to be a draft, a promissory note, of the form of a promissory note, and the second of which appears to be a notation. Whose handwriting is that?

A. Both the note and the longhand note are my handwriting.

(Testimony of Timothy O'Connor.)

Q. Is that the note, and the longhand notations that you referred to just now? A. Yes.

Mr. Jacobs: For the sake of the record, your Honor, we will offer this as Trustee's Number 5 in evidence.

The Court: The paper may be so marked as Trustee's No. 5. [66]

(Thereupon the foregoing documents were introduced in evidence and marked Trustee's Number 5 in evidence.)

Q. (By Mr. Jacobs): Now then did you subsequently cause your informal draft, which has just been marked Exhibit 5, to be reduced to typewriting? A. Yes, I did.

Q. I show you a photostat—I take it there won't be any objection for failing to produce the original?

Mr. Shapro: No.

Q. (By Mr. Jacobs): Of this installment note in the same amount as this drafted note that has just been introduced in the amount of \$28,000.00, and ask you whether that is the note as reduced to typewriting, to which you have just referred?

A. To the best of my recollection it is. The material at the bottom of it "I guarantee payment of the foregoing obligation," the signature, I believe, was on the back of the longhand note I made. I don't believe it was on the front of the obligation at the time.

Q. It was on the document, however?

A. As I remember it, yes, the longhand notes, that was written on the back.

(Testimony of Timothy O'Connor.)

Q. Well, did you see this note that we are now discussing? Did you see this note after or before it had been signed?

A. To the best of my recollection I never saw the note after the afternoon that these gentlemen were in my office. I had [67] the note prepared and gave it to Mr. Elliff, as I remember it. That is the last time I have seen the note to this date, as far as that goes except the longhand notes.

Mr. Jacobs: We will ask that this be marked Plaintiff's Exhibit 6 for Identification, if your Honor please, and we will authenticate it later.

The Court: Exhibit 6 for identification.

(Thereupon the foregoing photostat was marked Plaintiff's Exhibit 6 for identification.)

Q. (By Mr. Jacobs): Now how long did this conference last?

A. Oh, it was approximately half an hour to forty-five minutes.

Q. You stated that Mr. Ramsey was present?

A. Yes. At least, the gentleman that was introduced to me as Mr. Ramsey, yes.

Q. Did you see the gentleman in the courtroom now?

A. Well, I don't remember him specifically. But they tell me at least I have found out since I came in the courtroom—that the gentleman in the brown suit is Mr. Ramsey.

Q. And did Mr. Ramsey take part in the discussion? A. Yes, he did.

Q. What part did he take in it?

(Testimony of Timothy O'Connor.)

A. Well, Mr. Ramsey, as you will note on the longhand notes on the yellow sheet, there was first a set up of payment which wasn't agreeable to Mr. Ramsey. He decided how the [68] payments were going to be. The original schedule of payments was changed to one suggested by Mr. Ramsey. That is the schedule of payments that is at the bottom of the yellow sheet. That was incorporated in the note.

Q. You mentioned the fact that at that conference this trust agreement was also discussed?

A. Yes.

Q. Did Mr. Ramsey take part in the discussion regarding the trust agreement?      A. Yes.

Q. What part did he take in the discussion of that subject?

A. Well, as I remember and recollect the entire transaction Mr. Elliff introduced me to Mr. Ramsey and Mr. Ramsey was the man that carried the ball, so to speak, from then on. He was the one who made the decisions as to what the payments were going to be and what the provisions of the trust agreement were going to be and the rest of it.

And, as I say, I didn't know enough about Mr. Elliff's financial matters to do anything about the agreement. So that I made the note, the note was taken out of the office and that is all I know about it.

Q. I see. And you had no subsequent connection with the transaction?      A. No, I did not.

Mr. Jacobs: Take the witness. [69]

(Testimony of Timothy O'Connor.)

Cross Examination

Mr. Shapro: May I have Exhibit 5, please?

Q. Mr. O'Connor, referring your attention to the yellow sheet which is part of Plaintiff's Exhibit Number 5, does that represent all of the notes that you took at this conference in your office that afternoon?

A. Yes.

Q. What if any notations does the yellow sheet, Exhibit 5, contain with respect to the provisions of the trust agreement?

A. The only reference that it makes to it is at the top of the yellow sheet, the word agreement is written, Pine Supply Company, Twin City Lumber Company, and then below that is the note George Elliff, Audrey May Elliff, his wife, and Pearl K. Lannin, his guarantor. Under that is the original payment schedule that was to be used.

But as I have already testified, it was changed at the request of Mr. Ramsey.

Q. What provisions as to the trust agreement did Mr. Ramsey according to your testimony, specify?

A. May I see it? Down at the bottom of the yellow sheet there is some question about warehouse receipts to be turned over and so forth to Mrs. Lannin.

And as I said before on the trust agreement the terms of that agreement were discussed by Mr. Ramsey and Mr. Elliff also. But as I have already testified, I told them that I [70] didn't know enough about it to enter into or even commence the prepa-



(Testimony of Timothy O'Connor.)

ration of that agreement and that they would have to return the next day to see Mr. Pasquinelli.

Q. I understand your testimony, sir, but what I am trying to find out is what discussion or what items in the discussion of the trust agreement did Mr. Ramsey contribute?

A. What specific provisions?

Q. Yes.

A. He discussed many provisions and I told him, as I have already said, that I didn't feel qualified because of my lack of knowledge of Mr. Elliff's financial condition to go any further with that matter. I told him so.

Q. Do you remember any of the provisions of the trust agreement that were suggested or discussed in your presence, with you and Mr. Ramsey?

A. Oh, there was a big question about who was going to be the trustee and who was going to sign the checks and where the deposits—what depository was to be used and how much was to be kept in the account to secure, so far as I remember, Twin City Lumber Company.

Q. As far as you remember, Twin City Lumber Company then is supposed to be a part to this trust agreement, right?

A. Well, I can remember this, Mr. Shapro. That the agreement, the trust agreement and the note, certainly as I understand it, was for the benefit of Twin City Lumber Company. [71]

Q. Who told you that?

(Testimony of Timothy O'Connor.)

A. That was the contention of the entire discussion in my office.

Q. Who told you that the note and the trust agreement were intended to be for the benefit of Twin City Lumber Company?

A. Well, all of the persons who were in my office, Mr. Elliff, Mr. Baum and Mr. Ramsey, made it quite clear that unless something was done immediately for the benefit of Twin City Lumber Company that they were going to close them up.

Q. Isn't it a fact, Mr. O'Connor, that as confided to you by the three gentlemen present, the only interest of Twin City Lumber Company was to get the \$28,000.00 note endorsed by Mrs. Lannin and then they would release the warehouse receipts to Mrs. Lannin?

A. That is—would you read the question?

(Question read.)

The Court: Do you understand the question?

The Witness: The transaction was not a completed transaction with the preparation of the note. They were to return the next day and see to it that this trust agreement was made up.

Mr. Shapro: I move to strike the answer, as being not responsive to the question.

The Court: It may go out. Answer the question. Do you understand it? [72]

The Witness: No.

Q. (By Mr. Shapro): You are sure?

A. That was not my understanding, no.

Q. You have a pretty good recollection of the

(Testimony of Timothy O'Connor.)

conversation, that conversation at the conference, Mr. O'Connor?

A. All I have, Mr. Shapro, is the rough hand copy of the note and the rough note on that yellow sheet. I knew that I couldn't complete the transaction. However, they wanted to get the note taken care of.

Q. I show you, Mr. O'Connor, the original of the installment note dated October 6th, 1953. I ask you to look at it and see if after examining it you want to change your testimony of the word of Mrs. Lannin, the guarantee, *where* on the reverse side of the note?

A. Well, I don't know that I want to change my testimony. I believe I testified that as I remember it the longhand copy that I used had the guarantee provision on the back of it and I didn't remember.

Q. I show you now, Mr. O'Connor, to refresh your recollection—it's a long time ago—the long-hand copy of the note.

The Court: Look on the face of it.

The Witness: Yes, it is on the face of it.

Q. (By Mr. Shapro): May I see Exhibit 6, please?

I ask you, Mr. O'Connor, to compare Plaintiff's Exhibit 6 for identification which I have shown you with what purports [73] to be the original. I ask you whether or not the photostat number 6 is a photostat of the original that I have just shown you.

A. So far as I can see it is, yes.

Mr. Shapro: We will offer in evidence if your

(Testimony of Timothy O'Connor.)

Honor pleases at this time the original of the installment note in question.

The Court: That is Defendant's Exhibit B. Put it in evidence.

(Thereupon the foregoing document was put in evidence as Defendant's Exhibit B.)

The Witness: Now I would like to add this to my testimony. You asked me if there was anything else discussed at this time. There was something discussed about Twin City Company doing business as Twin City Lumber Company and who the partners were and who apparently signed or have some control as to the signing of checks because this, I believe, that was the purpose of the term on the back of the note, the longhand copy of the note.

Q. (By Mr. Shapro): That is your best recollection of what is in your handwriting on the reverse side of the pink draft of the note which is part of Exhibit No. 5?      A. That's right.

Q. Did you ever see the trust agreement as finally executed?

A. No, I didn't, Mr. Shapro. [74]

Q. Then you had no opportunity to compare the document as ultimately executed by Mrs. Lannin and Mr. Elliff and Mr. Pasquinelli with the details of the proposed agreement as explained to you in this conference, is that right?

A. That is right. I didn't have any further connection with the transaction.

Mr. Shapro: No further questions.

Mr. Robert Jacobs: No questions.

(Testimony of Timothy O'Connor.)

Mr. Huntington Jacobs: With the permission of the Court and counsel I will excuse the witness.

(Witness excused.)

LOUIS PASQUINELLI

called as a witness by the plaintiffs, sworn.

The Court: What is your full name?

The Witness: Louis Pasquinelli.

Direct Examination

Q. (By Mr. Huntington Jacobs): Mr. Pasquinelli, you have heard Mr. O'Connor's testimony?

A. I did.

Q. And where were you at the time that he referred to, say at the time of this conference that he mentioned?

A. Well, I don't know specifically where I was, but I know I was out of the office at that time.

Q. Were you out of town?

A. So far as I can recall, I was out of town, yes.

Q. Did you subsequently take part in this transaction?

A. I did.

Q. That he referred to. And when did you come into that picture?

A. I think on the 8th of October of 1953.

Q. Did you have a conference on that day with, say, Mr. Ramsey and Mr. Elliff and Mr. Baum?

A. I did.

Q. In your office?

A. Yes.

Q. And what was the subject matter of that conference?

A. Well, as I recall the matter they came in and



(Testimony of Louis Pasquinelli.)

stated that they made this note, the Twin City Lumber Company, and they wanted to prepare some kind of agreement whereby funds that were to come in from the Pine Supply Company were to be left with someone in trust and to be disbursed by him in connection with the bills of the Twin City, of the Pine Supply Company.

A. I neglected to ask you a formal question. You are a member of the State Bar in California?

A. Yes.

Q. And were such in October of 1953?

A. I was.

Q. And you were at that time, were you not, the attorney for Mr. Elliff? A. I was. [76]

Q. Now what was said in this discussion regarding the terms of the trust agreement?

Mr. Shapro: I am going to object, your Honor, to the form of the question on the ground it is leading and suggestive. This is a lawyer that is on the stand and he is the plaintiff's own witness. I don't think that the subject matter of any part of a conversation should be suggested to him by the interrogator.

The Court: I don't think it suggests the answer, Mr. Shapro, what was said about a certain subject.

Mr. Shapro: He is assuming, if your Honor please, he is assuming that there was such a subject discussed.

The Court: Well, if there wasn't I assume he will tell us that.

(Testimony of Louis Pasquinelli.)

Q. (By Mr. Jacobs): Will you answer the question I asked you of what was said on this subject?

A. Well, I don't have too vivid a recollection on this particular transaction. But perusing my notes, all I can tell you what my notes show is exactly more or less what is in the agreement itself. Now I don't recall just specifically what the discussion was except that I can say there must have been a discussion along the lines as shown in my notes. That is how those notes were made.

My recollection is to the effect that the purpose of the whole thing was to relieve Mr. Elliff of the responsibility of [77] collecting accounts receivable for his business and also to see to it that any business that was done and any monies collected therefor would be funnelled through a trustee.

Q. Funnelled to him for what?

A. Eventually, it turned out to be myself. I was to be trustee, eventually, in the course of the discussion.

Q. You were the funnel, I take it?

A. Well, maybe so.

Q. What was said regarding the application of these funds?

A. The funds were to be used primarily to pay the expense of the Pine Supply Company, that is, the current bills, as they came in in the course of doing business. There was to be at all times retained twenty per cent of all monies turned over to the

(Testimony of Louis Pasquinelli.)

trustee, this twenty per cent to be applied on the Twin City note.

Q. Of the gross?

A. Yes, of the gross, that's right.

Q. Now was there any discussion regarding the matter of the notice?

A. I recall that I mentioned it at that time, that for the thing really to be done there should be compliance of Section 3540 of the Civil Code of California. It was generally agreed that that would not be a good thing to do at that time because it was feared that if the creditors or Mr. Elliff learned of this transaction that they would all jump into the thing and it [78] would defeat the very thing that was trying to be accomplished.

Mr. Shapro: If your Honor please, I am going to move to strike the words of the witness "It was generally agreed," and thereafter upon the ground it is a conclusion of the witness.

The Court: Granted.

Q. (By Mr. Jacobs): Now please state what was said and by whom in relating this conference, what was said on this subject. You have already told us what you said, as I understand.

A. That I am sure of now. Now who said what in regard to it—but I know of the three gentlemen that were there—there was a general discussion on that subject and I couldn't say specifically.

Q. What instructions were given to you by the three people there and which of them gave the instructions to you?

(Testimony of Louis Pasquinelli.)

Mr. Shapro: If your Honor please, I object to the question upon the ground that it assumes a fact not in evidence that three people gave instructions. There is no evidence to that effect. He has testified that he was representing Mr. Elliff.

The Court: That is right.

Mr. Jacobs: Very well. I withdraw the question.

Q. Now were you given instructions regarding the matter of notice? [79]

A. I was. Now are we talking about notice, Mr. Jacobs, you are talking about Section 3540, isn't that right?

Q. Yes. A. Yes.

Q. Yes, I am talking about notice to creditors.

A. That is right. I can't recall specifically who gave me those instructions.

Q. Were all three parties that you have mentioned present at the time the instructions were given to you?

A. Yes, at all times during the conference.

Q. And you don't recall however which particular one of the three gave you the instructions regarding notice? A. No.

The Court: Did you get any instructions about notice?

The Witness: Not in writing. What I mean, it was like I said before—it was generally agreed.

The Court: Well, did you get any instructions about notice? You answered no.

The Witness: Yes.

(Testimony of Louis Pasquinelli.)

The Court: What is the difference, not to give notice?

The Witness: Not to give notice, yes, that is right.

Q. (By Mr. Jacobs): Not to give any notice?

A. That's right.

Q. Was there any discussion during that conference as to the financial condition of Pine Supply Company or Mr. Elliff? [80]

A. There was.

Q. And what was said on that subject and by whom?

A. Well, the same thing again. I can't say specifically who said any of these things, Mr. Jacobs, but I do know the matter of the finances was discussed.

Q. And all three people were present at the time of the discussion?

A. Yes.

Q. Can you tell us what was said about the financial condition of the Pine Supply Company?

A. Well, to my recollection there was a discussion concerning what amount of stock and trade was on hand, more or less what amount of accounts receivable the business had. And there was some discussion as to what liability there was about it. I don't remember amounts or anything at this time.

Q. How long had you been representing Mr. Elliff at this time, Mr. Pasquinelli?

A. Oh, I don't know. I have known Mr. Elliff since about 1950. I have been representing him more or less since then.



(Testimony of Louis Pasquinelli.)

Q. Were you connected with the Coast Range Lumber Company transaction?

A. Yes, I was.

Q. And was Mr. Elliff one of your associates in that matter?      A. He was, yes. [81]

Q. At the conclusion of this venture did you know anything about the financial condition of Mr. Elliff?

A. That would have been in the year 1952, I believe; yes, yes.

Q. And what can you tell us about his financial condition at that time?

Mr. Shapro: I am going to object to the question if your Honor please upon the ground it calls for the opinion and conclusion of the witness and no proper foundation has been laid.

The Court: I am inclined to think it does, counsel.

The Witness: Well, so far as I know——

Mr. Jacobs: Just a minute. The objection has been sustained to the question.

The Witness: Oh, I am sorry. I misunderstood you.

Q. (By Mr. Jacobs): Did he owe you any money?

A. Yes, I guess he did; yes, on some guarantee agreement that we had signed jointly.

Q. And do you know whether or not he was indebted to one Charles Lannin?

A. I think he was on the same basis.

(Testimony of Louis Pasquinelli.)

Q. And what was the aggregate amount of the indebtedness?

A. Oh, I don't know definitely. But I think it was around \$13,000.00 or something to that effect.

Q. Now did you represent Mr. Elliff during the operation of [82] Abbot Lane partnership?

A. I did, yes, on some matters.

Q. And did you represent him at the time of the dissolution of that partnership? A. Yes.

Q. Did you make any inquiry as to the net worth of that part to ascertain—I am not asking you what it was—but did you make any inquiry to ascertain what the net worth of that partnership was at the time of the dissolution?

A. I don't recall specifically but I do think that there was some financial statement or something around there to that regard. I don't recall just what it was now.

Q. I see. Now in this conference regarding the terms of the Twin City agreement did Mr. Ramsey take part in the discussion? A. Yes.

Q. Did he take an active part? A. Yes.

Mr. Shapro: Object to the question on the ground it calls for the conclusion of the witness.

The Court: Well, it does. He has answered it.

Q. (By Mr. Jacobs): When you had received the data as to what was to be included in the trust agreement—withdraw that.

Did you put anything into that agreement that had not been discussed at that conference regarding the terms of the agreement? [83]

(Testimony of Louis Pasquinelli.)

A. Not to my knowledge.

Q. You did finally prepare the agreement?

A. I did.

Q. Did you not?           A. I did.

Q. What was done with it after you had prepared it?

A. Well, my best recollection is that as a result of the telephone conversation with Mr. Robidoux that he picked up one or more copies of it. Then he mentioned it was signed. I don't recall whether it was signed in my office or just where, but he mentioned it was signed.

Q. Do you recall the date on which he picked up those copies?

A. No, I don't. I don't know now whether the agreement was prepared on the same day that we had the conference or not. I couldn't say.

Q. Do you remember what was done with the note that you have heard mentioned by Mr. O'Connor?

A. So far as the note is concerned, I don't know that. I didn't see it before this agreement was made, but maybe I am wrong on that. But I don't have any recollection on that score. I have seen it since, I think, but I didn't see it at that time.

Q. Am I correct in understanding that the purpose of this conference at which the trust agreement was discussed was [84] entirely the terms of the trust agreement and what was to be done about it when it was completed?           A. That's right.

Q. Now when was this trust agreement and the

(Testimony of Louis Pasquinelli.)

note—or when were the trust agreement and the note signed, if you know?

A. I don't recall. The only recollection I have is that I believe the note had been signed before I conferred with the people at all. And just when the trust agreement was signed, I don't have any independent recollection on that at all.

Q. Were you present at the time when these documents were signed?

A. I don't recall, Mr. Jacobs, I don't recall.

Q. The trust agreement appointed you—or just a moment, get this trust agreement in evidence. I show you a document entitled "Trust Agreement" bearing date the day of October, 8th day of October, 1953, and bearing what purports to be the signatures of George F. Elliff, Louis Pasquinelli as trustee, and Pearl K. Lannin as beneficiary, Mr. Elliff being described as trustor, and ask you whether that is the trust agreement to which you have referred?

A. That is.

Q. Do you recognize these signatures?

A. I do.

Q. Are they the signatures of the persons whose signatures they purport to be? [85]

A. Yes, I believe so.

Mr. Jacobs: We offer this in evidence as Trustee's next in order.

Mr. Shapro: To which if your Honor please we object upon the grounds that it is incompetent, irrelevant and immaterial and not binding upon the defendant Twin City Lumber Company in this case.

(Testimony of Louis Pasquinelli.)

Twin City Lumber Company not being a party to the agreement on its face.

The Court: The objection may be overruled and it may be admitted and marked as Exhibit No. 7.

(Thereupon the foregoing Trust Agreement was admitted and marked as Exhibit No. 7.)

Q. (By Mr. Jacobs): Now as trustee under that trust agreement, Mr. Pasquinelli, how long did you serve?

A. Oh, may I look at my file on that, Mr. Jacobs? I don't recall definitely.

Q. Perhaps there wouldn't be any serious objection if to shorten the time I suggest to the witness that he examine his account as trustee, I mean, his record of checks issued.

A. May I answer the question now? So far as I can?

Q. Yes, please.

A. The only thing I can tell is that from my file I see that on the blank day of April, 1954 I had prepared a termination of trust and release, so I assume that my duties as trustee terminated sometime in April of 1954. [86]

Q. Did you keep a record of the checks that you issued as trustee? A. I did.

Q. Do you have that record with you now?

A. I have the sheets from my trustee ledger, yes.

Q. Now I show you what purports to be a photostat of a record entitled Louis Pasquinelli, trustee for Pearl K. Lannin, analysis of cash receipts and disbursements, Anglo-California National Bank. Is



(Testimony of Louis Pasquinelli.)

that a photostat of the account of such transactions that you have just referred to?

A. No, it is not, Mr. Jacobs. I think it is compiled, however, from the ledger sheets that I just spoke of but it is not a photostatic copy of the ledger sheets.

Q. I see. Do you know when this document was compiled?

A. I don't recall. It was sometime after I had terminated my duties as trustee, but I don't recall just when.

Q. Was it compiled at your request?

A. I don't recall whether it was compiled at my request or yours, to tell you the truth. But it was compiled in my office I believe, by Mr. Baum, if I am not mistaken.

Q. You have your ledger sheets?

A. I do, yes.

Q. Well I would just like to deprive you of them. I think we had better have your records showing the disbursements that you made because they include, if your Honor please, number one, [87] at least, of the disbursements that are referred to in this case. Perhaps I can offer it this way, and avoid depriving the witness of his records.

Q. Did you as trustee under that trust agreement ever issue any check that you were not requested to issue by Mr. Elliff?

Mr. Shapro: I am going to object to that question if your Honor please upon the ground it is immaterial, incompetent and irrelevant. In other

(Testimony of Louis Pasquinelli.)

words, we take the position that the objectivity of the trustee under that trust agreement is not binding upon us. We are not parties to it.

The Court: Well, if that develops, won't that go to the weight of it? I will permit him to answer.

The Witness: So far as I know, all checks were issued with Mr. Elliff's—at Mr. Elliff's direction.

Q. (By Mr. Jacobs): Now did you issue any checks to the old firm, that is Twin City Company?

A. I issued a check to whoever was named on the note that we are talking about, yes. I believe it was Twin City Company.

Q. Will you find the date of that check and state the amount of it, of the check that you issued?

A. Well, here on the ledger reveals that on December 30th, 1953, a check in the sum of \$2,500.00 was issued to Canadian Bank of Commerce. Now——

Q. Can you tell us the purpose of this check?

A. The purpose of that check was, so far as I knew, to apply [88] it on this note. I had received a letter from the Canadian Bank of Commerce to the effect that the matter had been referred to them for collection; that is, the note had been referred to them for collection.

Q. Did you have any other occasion than that of making a payment of the note to send a check to the Canadian Bank of Commerce at that time?

A. I think that was the only payment that I made to them.

Q. Now can you tell us positively whether that

(Testimony of Louis Pasquinelli.)

was or whether it was not a payment on account of that note?

A. So far as I was concerned it was, yes.

Q. It was? A. Yes.

Q. Mr. Pasquinelli, where did the funds that paid that check come from?

A. Out of monies that were turned over to me from the Pine Supply Company under this trust agreement.

Q. Turned over to you by whom, Mr. Pasquinelli?

A. Mostly by Mr. Elliff. But then some funds I received myself through the mail and so forth.

Q. On account of what accounts receivable?

A. On account of accounts receivable, yes.

Q. Of that company? Who collected the accounts receivable under that trust agreement?

A. Well, now I don't know who collected them. All I can [89] tell you is who brought me the money when it was brought to me.

Q. And who was that, was that Mr. Elliff?

A. Ordinarily, unless he sent it up through one of his men. Ordinarily he would bring the checks up.

Q. Was any notice of the trust agreements given to creditors of the Pine Supply Company that you know? A. Not to my knowledge.

Q. Of any kind and nature?

A. Not that I know of. I don't recall giving any notice to anyone.

Q. Would you answer the same with respect to

(Testimony of Louis Pasquinelli.)

the note? Was any notice given to any of the creditors of the discussion of that note?

A. Not to my knowledge.

Q. You terminated your connection with the trust, you say, in April?

A. I believe that is correct.

Q. What did you do with the funds that were then on hand in the trust, if there were any?

A. I turned over to Pearl K. Lannin on the 24th of—the ledger sheet shows the 24th of March, that is probably correct, on the 24th of March I turned over to Mrs. Pearl K. Lannin the sum of \$2,063.72.

Q. And did you have any further dealings with the trust [90] funds or with the business of the trust after that?      A. I believe not.

Q. Of your own knowledge do you know whether any other trustee was appointed to administer the terms of the trust after you ceased to be trustee?

A. I can't say that I can say of my own knowledge, no.

Q. As trustee for Mrs. Pearl K. Lannin, what if any dealings did you have with that lady?

A. Mrs. Lannin?

Q. Yes.

A. Oh, no dealings other than she on occasion would inquire about these things. But I mean I didn't represent her.

Q. Did she ever give you any instructions as to what she wanted you to do as trustee?

A. Not that I recall.

(Testimony of Louis Pasquinelli.)

Q. Is it correct to say that all the instructions you did receive in that regard came to you from Mr. Elliff?      A. I think so.

Q. Did you have any correspondence while you were serving as trustee with Twin City Company?

A. I did.

Q. In what connection?

A. I received one or two letters concerning some account that—current account that the Pine Supply owed to them and asking whether or not they could be paid. [91]

Q. Now during the time that you were serving as trustee—I think your testimony is you started in shortly after October 10th, is that right?

A. I believe that is right. The first entry of any funds shows October 13th, 1953.

Q. Was any purchase made of merchandise from Twin City Company by Pine Supply Company?

A. I cannot—I could not say that to my own knowledge. I had nothing to do with matters of that kind.

Q. Did the correspondence deal with any such purchase that you have just mentioned?

A. You mean the correspondence from Twin City?

Q. Yes.      A. I believe that it did.

Q. And do you have the correspondence that you have just referred to?      A. I believe I do.

Mr. Jacobs: May I see it?

The Witness: Yes.

The Court: Let's take a recess at this time.



(Testimony of Louis Pasquinelli.)

(Recess.)

Q. (By Mr. Jacobs): During the recess, Mr. Pasquinelli, you have examined your correspondence file? A. I have.

Q. Do you find anything in that file that has to do with that [92] \$2,500.00 payment to which you have referred? A. I do.

Q. Will you please produce that?

A. I don't know whether Mr. Roberts has seen that or not.

Q. You have just handed me what purports to be a letter dated December 30th, 1953 addressed to yourself by Pearl K. Lannin. It says,

"You are authorized to pay to the Canadian Bank of Commerce the sum of \$2,500.00 out of the trust funds held by you, this amount to be applied on the promissory note of George and Audrey Elliff for \$28,000.00 which is dated October 6th, 1953, and payable to the Twin City Lumber Company."

Do you recognize the signature?

A. I do.

Q. Is that of Pearl K. Lannin? A. It is.

Q. Have you any reason to want to retain this letter in your files? A. Not particularly.

Mr. Jacobs: Well, to complete the record, your Honor, we will offer it.

The Court: Exhibit 8.

(Thereupon the foregoing letter was introduced in evidence as Plaintiff's Exhibit No. 8.)

Mr. Jacobs: I think you can take the witness.

(Testimony of Louis Pasquinelli.)

Cross Examination

Q. (By Mr. Shapro): Mr. Pasquinelli, am I correct in assuming that this letter from Mrs. Lannin, which is dated December 30th, 1953, was procured by you from her before you issued the check for \$2,500.00 for the Canadian Bank which you previously identified? A. I believe it was.

Q. Mr. Pasquinelli, you have testified in response to one of Mr. Jacob's questions that you did not put anything in the trust agreement other than that which was discussed before you at this meeting, is that right? A. That is right.

Q. Is it also true that you did not omit from the agreement anything which was discussed in front of you and for the purposes of the meeting included in the agreement?

A. I believe that is right.

Mr. Shapro: No other questions.

Redirect Examination

Q. (By Mr. Robert Jacobs): Mr. Pasquinelli, at this meeting that you have referred to, was there any discussion that took place as to any need for a return in this whole transaction?

A. I believe there was such a discussion.

Q. Can you identify the parties who made any reference to a need for a return? [94]

A. Well, I believe both Mr. Elliff and Mr. Ramsey both stated that the matter was urgent.

Q. Can you remember what Mr. Ramsey had to say on this particular point?

(Testimony of Louis Pasquinelli.)

A. I don't recall specifically except that there was talk about the fact that Mr. Hunter and the Twin City Company either wanted something down right away or else he was going to have to close Mr. Elliff's place of business down.

Q. Was there any discussion at that meeting regarding who would guarantee the note?

A. I don't recall that because if I remember correctly the note, as I stated before, had already been executed. I don't think it entered into the discussion.

Q. Was the note present at this discussion?

A. I don't recall, Mr. Jacobs.

Q. Do you recall whether Mrs. Lannin had signed the note at the time or not?

A. No I don't.

Q. Were there any discussions made during this discussion by Mr. Ramsey as to what would be put into the trust agreement?

A. I can't recall any specific discussion. There was something about it made, but I know he was in the general conference. I know the general conversation between myself and Mr. Ramsey concerned the whole transaction.

Q. Isn't it true that Mr. Ramsey insisted on the trust [95] agreement?

Mr. Shapro: I object to the form of the question, your Honor, upon the ground that it calls for the opinion and conclusion of the witness.

The Court: Sustained.

Q. (By Mr. Jacobs): Do you remember any

(Testimony of Louis Pasquinelli.)

statements made by Mr. Ramsey in which he insisted upon the trust agreement?

Mr. Shapro: Same objection, if your Honor please.

The Court: Well, do you remember any statements made by Ramsey concerning the trust agreement of any kind?

The Witness: None specifically except like I say he was in general conversation concerned with the preparation of the agreement; but nothing specifically that I can recall.

Q. (By Mr. Jacobs): During this conversation all of the terms of the trust agreement were discussed? A. They were, they were.

Q. And was a discussion held as to twenty per cent of the gross? A. Yes.

Q. Received that should be withheld? A. Yes.

Q. Mr. Ramsey took part in that discussion?

A. So far as I can recall he did.

Q. Do you recall whether Mr. Ramsey suggested that or not?

A. I can't recall specifically. I couldn't truly say that [96] I do.

Q. It is true, isn't it, that a discussion was held in which twenty per cent—it was mentioned that twenty per cent would be retained and applied on the notes payable to Twin City?

A. I think that is correct.

Q. Did Mr. Ramsey make any request to you that he be given a copy of the trust agreement when it was completed?

(Testimony of Louis Pasquinelli.)

A. No, I don't recall. I don't recall whether he did or he didn't.

Q. When the check was made out that you discussed in your testimony to Mrs. Pearl K. Lannin at the termination of your trusteeship, was that check delivered by you to Mrs. Lannin?

A. I don't believe it was.

Q. Who was it delivered to?

A. If I recall correctly, I believe it was given to Mr. Elliff. I am not positive, but I think it was given to Mr. Elliff. It was made payable to Pearl K. Lannin.

Mr. Jacobs: No further questions.

Mr. Huntington Jacobs: With the permission of the Court and counsel I will excuse the witness.

(Witness excused.)

Mr. Huntington Jacobs: Mr. Baum who has been mentioned in Elliff's testimony and that of the other witnesses is present in Court, your Honor. He is a Certified Public Accountant of San Jose. I am told by him that if it is possible [97] to complete his testimony today, it would be of great convenience to him. I don't know.

Mr. Shapiro: I am sure that can't be done. I say that advisedly. I am sure that the cross examination of Mr. Baum alone will take more than the time remaining in the afternoon.

Mr. Jacobs: Then there is no purpose in putting him on out of order. Mr. Elliff, will you resume the stand?



GEORGE F. ELLIFF

previously sworn, resumed

Redirect Examination

Q. (By Mr. Huntington Jacobs): Mr. Elliff, you have told us that during the period from about the middle of May until the last part of September you received a number of letters from the old firm relative to your account with that firm. Did you receive any other communications from Mr. Hunter?

A. There was numerous phone calls from various occasions.

Q. Over what period of time?

A. Well, from the very conception of the agreement on the warehousing agreement.

Q. And extending to what period? To what time?

A. Up until the time of bankruptcy actually.

Q. In other words, to and beyond the time of this October transaction that we have just been talking about?

A. Well, they became less frequent after October.

Q. I see. Now can you give us the dates of these several conversations? How many of them were there, let's ask that question first? [98]

A. The average was probably once a week, weekly, or maybe even more so.

Q. How did they originate?

A. Well, Mr. Hunter would contact me by phone from his Los Angeles office on different phases of the business, the progress he was making, how the

(Testimony of George F. Elliff.)

account stood moneywise, mostly moneywise always.

Q. Did he make inquiry of you in those conversations regarding the condition of the business, the financial condition of it? A. Yes, he did.

Q. And did you inform him in that regard?

A. Yes. It was openly discussed.

Q. And did you tell him accurately what the condition was? A. Yes, I'd say I did.

Q. Now when was the last of these conversations by telephone, when did that occur, the last prior to the 6th of October, 1953?

A. If I recall correctly it was in the latter part of September.

Q. And from what point did that telephone call originate? A. I believe from San Francisco.

Q. Now with whom did you talk on that occasion?

A. I first talked to Mr. Ramsey and then Mr. Hunter, which I had had knowledge was also on the extension.

Q. You evidently have some knowledge that he was on the [99] extension. How did you learn that fact?

A. Well, after the conversation became pretty heated then he spoke up, at which time I knew he was on the line.

Q. And what was discussed in that conversation?

A. He was very unhappy and dissatisfied with the affairs.

Q. No, just give us the subject matter.

(Testimony of George F. Elliff.)

A. He was making demands on collecting these accounts receivable and the warehouse agreement as it was originally written. He was very unhappy about it and dissatisfied. He made it very plain that he wanted something done immediately.

Q. And what was said and by whom in that connection?

A. Well, Mr. Hunter stated that he was going to get *us* money somehow. I told him that if it was humanly possible I would like to pay him immediately to get out from under his thumb. He said he didn't care what happened to the rest of the people, that he wanted his now. That was the gist of it.

Q. Was any suggestion made at that time by any party to the conversation as to the way in which this payment may be made or obtained?

A. No, sir, not at that time.

Q. Now subsequent to that time did you have a conversation with Mr. Ramsey in that same connection?

A. Numerous conversations, I believe, would be more correct.

Q. And did you have any conversation with Mr. Ramsey in the course of which you discussed about entering into a new [100] arrangement?

A. Yes, I did.

Q. I see. And when did that conversation occur and where?

A. I believe the first suggestion came from me by telephone to Mr. Ramsey on a Monday after we had been to the bank on a Thursday or a Friday or

(Testimony of George F. Elliff.)

Thursday. That was where I left off and at noon when I said Mr. Ramsey accompanied me to the Hester Branch Bank of America. At that time I mean I was up to my wit's end.

The Court: What month was this?

The Witness: In September of 1953.

The Court: Well, a moment ago you just testified in response to a question to the last conversation before October 6th.

The Witness: That is what you asked about.

Q. (By Mr. Jacobs): That was the last telephone conversation, your Honor. Now I am asking whether he subsequently had any conversations with Mr. Ramsey regarding a new agreement.

The Court: That is before October 6th, you mean?

Mr. Jacobs: Prior to October 6th, yes.

The Witness: Yes, I did.

Q. (By Mr. Jacobs): You did?

A. Yes, sir.

Q. And now tell us again when this—or tell us when that occurred? [101]

A. I'd say within four or five days prior to the signing of the agreement, trustee agreement and the note.

Q. Very shortly before the signing?

A. The signing of the note.

Q. Or had the note been prepared at that time?

A. No, sir.

Q. Had the trust agreement been prepared?

A. No, sir.

(Testimony of George F. Elliff.)

Q. Had either of these conferences that Mr. O'Connor and Mr. Pasquinelli testified to taken place?      A. No, sir.

Q. How long before the first of those conferences took place was this conversation?

A. I say two days prior to entering Mr. O'Connor's office on writing up the note, if I remember correctly.

Q. Now did this conversation with Mr. Ramsey precede or did it follow the telephone conversation that you have just referred to with Mr. Hunter?

A. It followed.

Q. It followed. How long after that was it?

A. Oh, ten days I would say.

Q. Now did it precede or follow this interview that terminated in a visit to the Hester Branch of the Bank of America?

A. The telephone conversation?

Q. No. The talk with Mr. Ramsey that we are—— [102]      A. It followed.

Q. It followed?      A. Yes, sir.

Q. Then let us get the substance of this conversation with Ramsey that wound up at the Hester Branch of the Bank of America. Have you told us all that occurred in that conversation?

A. I don't recall. But I could review what was said.

Q. Please do.

A. He was there as an agent of Twin City Lumber Company to establish some way, workable way



(Testimony of George F. Elliff.)

for both myself and their company to pay them up in full.

And he gave me I'd say two or three alternatives in which to arrive at that. One was to pay up in full and they would give me back the warehouse receipts. Another was to lock me up.

The Court: What was that?

The Witness: Lock me up. I mean, lock up the warehouse and discontinue business, which they did. Or to make some other arrangements it was left up to me to come up with.

Q. (By Mr. Jacobs): What did they say—what did Mr. Ramsey say regarding the continuance of the May agreement if he said anything?

A. It was terminated right then and there. I presumed at that time. [103]

Q. And what was said in that regard by Mr. Ramsey, if anything?

A. He gave me direct orders to lock the warehouse and to discharge anyone that was working for Pine Supply Company.

The Court: Gave orders to do what?

The Witness: To lock up the warehouse and discharge all employees. We were permitted only to continue business if we would want to under cash sales, which I could stay there and carry on the business, but I could only sell the material for cash.

Q. (By Mr. Jacobs): Was anything said about any further deliveries under the May agreement from Twin City Company?

A. They had been discontinuing, the order had

(Testimony of George F. Elliff.)

been discontinued in August of that year.

Q. Now at what time was the warehouse locked up, as you say?

A. I'd say around the 30th of October, 1953.

The Court: 30th of October?

The Witness: I mean September, pardon me, sir, of September.

Q. (By Mr. Jacobs): Now after that conversation with Mr. Ramsey what did you do in reference to preparing a new agreement, if you did anything?

A. Well, I talked it over with them, with my wife. Then I went and talked to my mother-in-law and said that the only solution I could possibly think of myself was to——

Q. Is this a conversation between you and your mother-in-law? [104]

A. This is a solution that I came up with with Mr. Ramsey.

Q. Is that what you told Ramsey?

A. That if she would sign a note for \$28,000.00 that we could work out some arrangements where the inventory could be her security and the signing of the note as guarantor and I mean to continue.

Then I believe, if I am correct, I saw Mr. Ramsey or either he came to the warehouse again the following week, I believe this took place over the week end.

On Monday I had a conversation and told him what I proposed to do or could do. He mentioned that he could not give me the final answer but he would discuss this with Mr. Hunter and that since

(Testimony of George F. Elliff.)

time was of the essence in it he would give me an answer as soon as possible, which he did.

Q. Was this before or after the warehouse was locked up?

A. This was after the warehouse had been locked up.

Q. I see. Now then what happened next in reference to the negotiation of a new agreement?

A. There was several phone calls back and forth with Mr. Ramsey and myself. I believe Mr. Hunter called me directly and stated that he would consider this subject to submission of Mrs. Lannin's financial statement.

Q. Now you speak about an inventory being made security. Who suggested that arrangement?

A. To whom, sir? [105]

Q. Who suggested it to you? Did you originate the idea?

A. I originated that idea, yes.

Q. Now as to the terms in which this agreement arrangement was to be embodied, who suggested them?

A. The trustee agreement and the trustee account was at the insistence of Mr. Ramsey.

The Court: What idea did you originate?

The Witness: My mother-in-law co-signing of the note.

Q. (By Mr. Jacobs): Now when was this suggestion made by Mr. Ramsey?

A. In the office of Mr. Louis Pasquinelli.

Q. And when?

(Testimony of George F. Elliff.)

A. I believe in the morning of October 4th.

Q. And who was present?

A. Mr. Pasquinelli and myself and Mr. Baum.

Q. And what was said and by whom regarding the terms of this new arrangement at that interview?

A. Mr. Ramsey stated to Mr. Pasquinelli that there would be some arrangements made to where they could be guaranteed the money.

Q. Who are "they"?

A. Twin City Company, their money, because they wouldn't rely on any signature on a check by myself.

Q. Now this you are saying was on the 4th, I take it? That was prior then to the conference with Mr. O'Connor? [106]

A. It was after the conference with Mr. O'Connor.

Q. The note bears date October 6th, Mr. Elliff. Does that refresh your memory as to the probable date of this conference that you are just referring to now?

A. Well, I still would cling to the idea that it was the 4th because I think Mr. Pasquinelli was out of town two days. I am not sure. But I know he was out of town at the time we agreed to do this.

Q. What is your recollection as to which of these documents was prepared first?

A. My recollection?

Q. I mean by these documents the note and the trust agreement?

(Testimony of George F. Elliff.)

A. The note was prepared first. That was to show good faith on our part.

Q. Was the note signed prior to the execution of the trust agreement or not?

A. If my recollection is right, it was signed—they were both signed at the same time.

Q. Now at this conference you heard Mr. Pasquinelli's testimony, did you not?      A. I did.

Q. Are you referring now to the same conference that he was referring to?

A. I was. I am referring to—had been referring to the rough draft of the trustee agreement. [107]

Q. You say that the parties present there were Mr. Ramsey and yourself and Mr. Baum as well as Mr. Pasquinelli, is that correct?

A. That is correct.

Q. And do you recall what part Mr. Ramsey took in that discussion?

A. He laid out the percentage which was too high.

The Court: Laid out the what?

The Witness: The percentage that would be withheld from gross receipts which was too high. I objected to it and Mr. Baum objected to it. Then we mutually agreed that the business couldn't stand that much, which was thirty per cent, I believe, and we settled on twenty per cent.

We also wanted three years in which to pay off the note. He wouldn't go along with that idea. We finally settled on twenty-two months.

Q. (By Mr. Jacobs): Was this discussion about



(Testimony of George F. Elliff.)

the payment of the note—did that take place at this conference at Mr. Pasquinelli's office in his presence?      A. Yes.

Q. Let us go back for a moment and examine the conference that Mr. O'Connor referred to. I think you have testified that that took place about two days previous to this?

A. A day or two days.

Q. A day or two days previous. And who was present on [108] that occasion according to your recollection?

A. Mr. Baum, Mr. O'Connor, and Mr. Ramsey and myself.

Q. And what subject or subjects were discussed at that conference?

A. The drawing up of the note which we had agreed to by that time. They were trying to hold it to round figures, it was \$28,116.00, if I remember right. We agreed that we would pay \$116.00 and make an even \$28,000.00.

Mr. Ramsey, as I recall, made certain suggestions that Twin City were going to insist upon if they were going to agree to this at all. I mean it was more or less a general discussion but Mr. O'Connor wouldn't continue until Mr. Pasquinelli came back.

Q. Well, there was discussion, was there, at that conference of the terms of the trust agreement?

A. It was brief, but there was, yes.

Q. And was there discussion at that conference regarding the terms for payment of the note?

(Testimony of George F. Elliff.)

A. I believe so, sir. But it wasn't concluded, it wasn't final.

Q. It was not final?           A. No, sir.

Q. And that discussion as well as the discussion regarding the terms of the trust agreement was continued, was it, at this second conference? [109]

A. Until Mr. Pasquinelli returned, yes.

Q. I see. Now you have examined the trust agreement, have you not?

A. Yes, I have read it.

Q. Can you tell us whether all of the terms of the trust agreement were discussed at this conference before Mr. Pasquinelli?

A. Before Mr. Pasquinelli?

Q. I mean in Mr. Pasquinelli's presence.

A. In his presence, yes, they were.

Q. Was Mr. Ramsey continuously present during that discussion?           A. Yes, sir.

Q. Now have you told us all of the terms of the trust agreement that Mr. Ramsey suggested?

A. He voiced an opinion throughout the whole draft of the trustee agreement that he was present at all times.

Q. You mean that he *pressed* an opinion regarding each of these terms as it was discussed?

A. Generally, yes.

Q. Now was the matter of notice according to your own recollection discussed at this meeting with Mr. Pasquinelli?

A. I recall it very vividly, yes.

Q. And what was said and by whom according

(Testimony of George F. Elliff.)

to your recollection regarding that matter of notice? [110]

A. It was at Mr. Pasquinelli's suggestion that we did file under a certain section, which I am not familiar with. But it was mutually agreed not only by Mr. Ramsey because of the notice and the commotion it might create, but Mr. Baum and myself thought that it would be better to frankly hide the facts rather than put them on notice so that other creditors would be aware of this.

Q. Now was any notice, to your knowledge, given to creditors of the execution of the note? I mean to your creditors or any of them?

A. Not unless you could say that the checks, a trustee account.

The Court: What?

The Witness: The checks that were written by Mr. Pasquinelli did carry a trustee account.

Q. (By Mr. Jacobs): That is those checks that Mr. Pasquinelli issued carried that?

A. Yes, sir.

Q. And that is the only notice that you know of that was given to creditors, this transaction?

A. I can speak only for myself. But I gave no written notice to no other creditors.

Q. Do you know of your own knowledge of anyone else of having done so?

A. I am quite sure they did not. [111]

Q. Now who was it that suggested the reason for not giving notice to creditors, if you can remember?

(Testimony of George F. Elliff.)

A. There was just a mutual agreement. Everyone scorned on the idea.

Q. You all unanimously reached this agreement and refused to follow Mr. Pasquinelli's suggestion, is that your testimony?

A. Well, it was a little more thorough than that. We discussed it openly and we found the pros and cons of it not to be good. It wouldn't be conducive to continue to being in business, we decided.

Q. Was there any discussion as to what the creditors were likely to do specifically if they learned about this transaction?

A. I recall Mr. Pasquinelli saying that "You know this could be invalid." I do remember that. I mean he brought that up. He emphasized the fact.

Q. Was there any discussion as to any other actions that creditors might be expected to take if they learned of this transaction?

A. Yes, there was.

Q. And tell us the substance of that discussion.

A. Well, the subject was a concern to everyone present including Mr. Ramsey, Mr. Baum and myself and even Mr. Pasquinelli because he was quite aware of my affairs as to [112] what other creditors might do because we had had, I think, one attachment upon Pine Supply. So there was decided, but never carried out, that we would make the checks certified until we could more or less get ourselves out of the bind we were in. But it was never carried out.

(Testimony of George F. Elliff.)

Q. That provision of the trust agreement was not carried out, carried into effect?

A. No, sir.

Q. May I have that trust agreement I think it's in evidence. Thank you, sir.

I call your attention to this clause in the trust agreement which is Exhibit 7, "That in order to alleviate as much as possible the manual work involved in the administration of this trust, it is agreed that the trustor and/or his accountant shall submit to the trustee the proper invoices and vouchers, along with checks drawn by the trustor in payment thereof—the said check to be drawn upon the said trustor's personal account—and in order to forestall the possibility of attachment or other levy upon the said account, the said checks to be certified—and in turn, the said trustee shall deposit from the trust account into the account of the trustor [113] sufficient monies to honor the said checks, and the trustee shall thereupon mail the checks to the persons entitled thereto."

Was there a discussion of that clause at that interview with Mr. Pasquinelli prior to the preparation of this agreement?

A. I think every phase in that agreement was discussed, as Mr. Pasquinelli stated.

Q. Was there a discussion as to the reason for including such a clause in the agreement?

A. Yes, we were afraid of more attachments.

Q. Now after the trust agreement had been prepared and the note had been prepared, what was



(Testimony of George F. Elliff.)

done with these documents, if you know?

A. When you speak of document, what document?

Q. The note and the trust agreement.

A. I was instructed by Mr. Ramsey that as soon as they were signed that I was to furnish him with a copy so that he could approve them, which I did. I drove to San Rafael myself and Mr. Baum and met him over there in a restaurant. He examined them, read them, and said that he would mail them to Los Angeles.

However, I was also instructed by Mr. Ramsey to furnish a financial statement of Mrs. Lannin's.

The Court: When you say these documents, what are you talking about? [114]

The Witness: I am speaking of the note, the trustee agreement.

The Court: Well, the note was that the form of that also to be submitted to Ramsey.

The Witness: Ramsey had first seen it, it wasn't signed by Mrs. Lannin. He wanted proof that she was going to sign it.

The Court: He had already seen the note at that time, hadn't he?

The Witness: But he hadn't seen her signature. And a letter which stated that they would return the bad checks, as I said, I didn't have the financial statement of Mrs. Lannin at that time, but I assured him that I would have it the following day and to expedite the entire matter and get it off the calendar, why, I told him I was going to Los Ange-

(Testimony of George F. Elliff.)

les and that I would personally deliver these documents, meaning the trust deed and the note and the financial statements and this letter which accompanied to Mr. Hunter in person, which I did.

Q. (By Mr. Jacobs): Now before we go further, let's get back to this matter of the signing of these documents. They were executed as the document shows and when was that done and where was it done?

A. At Mrs. Lannin's house, I believe; in San Jose.

Q. Were they all executed at once or not?

A. I believe so, sir, I believe they were.

Q. I shouldn't have used the word "All". I meant to refer [115] to the note and the trust agreement.

A. Yes. It was after Mr. Robidoux had examined them and had delivered them to Mrs. Lannin that I picked them up. I recall that. I believe I signed them at the time I picked them up that evening, which must have been October 8th.

Q. That is the date that is borne by the trust agreement?

A. Yes, sir.

Q. Now do you recall by any other reason that it is the date of the trust agreement?

A. No, sir.

Q. This however occurred before you went over to see Mr. Ramsey, did it?

A. Yes, sir.

Q. Now what was it you say that you took to Mr. Ramsey?

A. I took this document here, the trust agreement, a letter which they were to sign and send

(Testimony of George F. Elliff.)

back to us agreeing to send back certain checks that had not been recognized by the Bank of America that they were holding, and the note. But I did not have one document that they requested and that was the financial statement.

Q. Were you alone when you took these documents to Mr. Ramsey on this occasion?

A. No, sir.

Q. Who was with you? A. Mr. Baum.

Q. And where did you see Mr. Ramsey?

A. Venetia Palms, I believe it's a restaurant and motel, hotel in San Rafael.

Q. Did Mr. Baum attend your conference with Mr. Ramsey there? A. He did.

Q. What happened at that time in reference to those documents?

A. Mr. Ramsey examined, read them carefully, I would say.

Q. Did that include the trust agreement?

A. Did it conclude it?

Q. Did it include it? A. Yes, yes, sir.

Q. Who suggested this letter regarding the return of the bad checks?

A. My attorney, Mr. Pasquinelli.

Q. Were the bad checks ever returned?

A. No, sir.

The Court: Where were they?

The Witness: They were in Los Angeles at that time.

The Court: They were checks to the Twin City Lumber Company by you?

(Testimony of George F. Elliff.)

The Witness: By me, sir.

The Court: And had been refused payment at the bank and then had been returned to the Twin City Company, is that [117] right?

The Witness: That's right, sir.

Q. (By Mr. Jacobs): And have they ever been paid, these checks that you are now referring to?

A. Well, it was my understanding and also my attorney's that in drawing up that letter and in drawing up the trustee agreement that that covered the checks. There was some \$18,000.00 owing, say, in open accounts or warehouse receipts, and some \$10,000.00 in bad checks which was to cover the \$28,000.00 described here.

Q. Was this understanding ever reduced to writing in any way other than by this unsigned letter?

A. No, sir. No, not to my knowledge.

Q. Did you ever get that letter back signed?

A. No, sir, I did not.

Q. And you say you never got back any of the bad checks?

A. I did not. On several occasions I requested *him* and Mr. Hunter said he would send them up.

Q. And do you know where they are now?

A. I do not, sir.

Q. Mr. Elliff, after Mr. Ramsey had inspected these documents, what did you do with them then, these documents being the note and the trust agreement?

A. The signed copy I took with me, but I left him a copy.

(Testimony of George F. Elliff.)

Q. Left whom a copy? [118]

A. Mr. Ramsey.

Q. You took the signed copy of what with you?

A. Signed copy of the trust agreement that Mrs. Lannin and myself had signed and Mr. Pasquinelli, one copy. I think we had three signed copies. We had all signed and kept a copy.

Q. And what did you do with the note?

A. Oh, the note I took with me to Los Angeles.

Q. I see. So then you left with Mr. Ramsey a copy of the trust agreement and you took the original of the note and the original of the trust agreement with you to Los Angeles, am I right?

A. I took a copy, not the original, because I kept, I think, the only signed copy I had. But I did have a copy unsigned.

Q. I see. Now did you show Mr. Ramsey on the occasion of this last conference with him the signed copy of the trust agreement?

A. Yes. Yes, I did.

The Court: Well, somebody had to get the signed copy of the note, didn't they?

Mr. Jacobs: Yes, sir.

The Witness: Mr. Hunter got the signed copy of the note, sir.

The Court: You delivered that to him in Los Angeles?

The Witness: Yes, sir. [119]

Q. (By Mr. Jacobs): Now at the time when you delivered the note to Mr. Hunter in Los Angeles,



(Testimony of George F. Elliff.)

what did you do with the copy of the trust agreement that you took there?

A. I enclosed the letter, the note and a copy of the trust agreement in a large manila envelope and left them at his door in Bel Air, California, I think it was.

Q. Well, leaving something at his door is a little bit vague, is it not?

A. I left it with the maid. Mr. Hunter—it was early in the morning—Mr. Hunter had not gotten up yet. I left it with the maid and she assured me that he would get it when he got up.

Q. Now were you alone on that occasion or was there anyone with you?

A. Mr. Baum was with me again.

Q. He was with you?           A. Yes, sir.

Q. By the way, approximately what date was this delivery made to Mr. Hunter?

A. It was on the Sunday morning following the signing of this agreement.

Q. Since we have not a calendar on hand can you tell us approximately how many days after this occurred, after your interview with Mr. Ramsey?

A. Three days and four days at the very most.

Q. Now excepting the warehouse receipts which I mentioned in the trust agreement, as you recall, what was done?

A. They were in turn signed——

Q. I should rephrase that question because it's misleading.

(Testimony of George F. Elliff.)

Respecting the warehouse receipts that you have referred to in your own testimony previously that were held by the old firm, what was done with those subsequent to your delivery to Mr. Hunter?

A. They were in turn, I think it was possibly a week later, mailed to Los Angeles to Douglass Guardian in San Francisco and in turn reissued on new receipts to Mrs. Lannin.

Q. Now to whom were those new receipts delivered?

A. I believe to Mrs. Lannin's attorney, Mr. Robidoux.

Q. Did you handle them at all?

A. No, sir.

Q. I see. On what date did this trust agreement go into effect?      A. October 8th, I believe.

Q. As soon as it was executed. When did Mr. Pasquinelli take over as trustee?

Mr. Shapro: I will object to the question if your Honor please on the ground that it calls for the opinion and conclusion of the witness.

Mr. Jacobs: The document doesn't say when the thing was actually put into effect. The document is the best evidence. [122]

Mr. Shapro: The obligation or——

Mr. Jacobs: Let me rephrase my question.

Q. When did you start to function under this trust agreement?

A. On about the 10th or 11th, I believe, was the first money received. And that is what we used to start the trustee account. So it was on Monday or

(Testimony of George F. Elliff.)

Tuesday after the agreement had been signed in October of '53.

Q. Was that before or after the warehouse receipts came into Mrs. Lannin—I mean came in from the old firm and were reissued to Mrs. Lannin.

A. It was before, I am quite sure.

Q. I see. First you said about the 10th or 11th and then you said Tuesday or Wednesday?

A. Well, I believe the 11th was about Tuesday or Wednesday.

The Court: The 11th was a Sunday, '53, October '53.

The Witness: Well then, it had been about the 13th. It was on my return from Los Angeles that we started the trustee account at the Anglo Bank.

Q. (By Mr. Jacobs): Let's get the dates of this trust in mind. How long did Mr. Pasquinelli serve as trustee?

A. I don't recall. I know it was in the Spring of '54.

Q. And did the trustee terminate—withdraw that question.

Was anyone appointed to succeed him? [122]

A. Yes, there was.

Q. Who was appointed to take his place?

A. Mrs. Barnhart.

Q. Was any new document executed at that time to evidence this change of trustees?

A. Yes, there was.

The Court: I think it might be convenient to

(Testimony of George F. Elliff.)

take a recess at this time. We will recess until ten o'clock tomorrow morning.

(Thereupon the Court recessed until 10:00 o'clock a.m. the following morning.) [123]

Tuesday, November 22, 1955

10:00 O'Clock A.M.

GEORGE F. ELLIFF

a witness called on behalf of the plaintiff, previously duly sworn, testified as follows:

Further Redirect Examination

Q. (By Mr. C. Huntington Jacobs): Mr. Elliff, you told us yesterday that during the month of March, 1954, as I recall it, a new trustee was appointed to act under this trust agreement that is in evidence? A. Yes, sir.

Q. Who was that? A. Mrs. Barnhart.

Q. Will you give her full name?

A. Juanita Barnhart.

Q. And how long did she serve as trustee under that agreement? A. Until July, I believe.

Q. Until July? A. Yes, sir.

Q. Bearing that in mind, the fact that this—admittedly this bankruptcy proceeding was started on July 10th, 1954, how long before that was it that she ceased to act?

A. She acted up until the end.

Q. She acted until the end? [125]

A. Yes, sir.

Q. Until July 10th? A. Yes.

(Testimony of George F. Elliff.)

Q. I see. Now when she resigned, what became of the fund?

Mr. Shapro: If your Honor please, just for the purpose of the record I would like it understood that the testimony concerning this alleged successor trustee is subject to the same motion to strike as your Honor made the evidence with respect to the original trustee. In other words, we have objected upon the grounds that since we were not parties to the trust agreement and no showing has been made that we were parties to the substitution of the trustee, that we are not bound by it.

The Court: Well, if you are not bound by it, you are not bound by it. It is in the record. I don't know whether I am going to strike it or not. We will wait and see what happens.

Mr. Shapro: I appreciate that your Honor is not ruling on it. I merely wanted it understood that it is being admitted subject to a motion to strike, which your Honor will consider when and if——

The Court: Well, we will see. I don't approve of proceeding on a general motion to strike. If you have something to offer and want to strike some particular thing—but I haven't heard anything about this until now and we have [126] proceeded quite a bit. I have it here that Mrs. Barnhart was appointed to succeed and the new document was executed. That was gone into yesterday.

Mr. Shapro: That is right.

The Court: My notes say so.

Q. (By Mr. C. Huntington Jacobs): Now, Mr.



(Testimony of George F. Elliff.)

Elliff, when Mrs. Barnhart resigned or ceased to act as trustee, what was done with the funds of the trust, if there were any?

A. The balance that was left in the bank went to pay off the taxes that were owed by the Pine Supply Company.

The Court: What kind of taxes?

The Witness: Sales taxes, withholding taxes on employees and old age and social security.

Q. (By Mr. C. Huntington Jacobs): During the term of the trust, I take it that it was all one trust, this substitution of trustees was simply a continuation of the trust under another trustee, am I right? A. That is correct.

Mr. Shapro: To that question, I object.

The Court: Sustained.

Mr. Shapro: It calls for the opinion and conclusion of the witness.

The Court: Sustained. The answer may go out.

Mr. C. Huntington Jacobs: All right.

Q. During the period from the time when Mr. Pasquinelli [127] took over as trustee until Mrs. Barnhard ceased to *ask*, did you ever make any requests of the trustee in office regarding the issuance of checks? A. Yes, I did.

Q. I hadn't quite completed my question.

A. Pardon me.

Q. Did you ever make any requests that were not complied with by the trustee?

A. Only if funds weren't available.

Q. And you spoke of one term yesterday, of

(Testimony of George F. Elliff.)

one term of the trust that was not observed entirely, regarding the issuance of checks by yourself against funds deposited in your account by the trustee. Was the twenty per cent provision in the trust; you know what provision I mean, do you not?

A. Yes, sir, it was.

Q. Was that observed throughout the period I have mentioned? A. Absolutely.

Q. Mr. Elliff, you told us yesterday something about the assets you had and the debts you owed at the time when you took over from Mr. Hodes—I mean from the Hodes Elliff partnership. Now I want to call your attention to the times at which you told us you took inventory with Mr. Ramsey of the business and examined the records of the business. That, I think, you said was in September of 1954? A. '53, sir. [128]

Q. '53? A. Yes, sir.

Q. '53? Yes. Can you tell us what the stock in trade of the business consisted of at that time?

A. Not accurately, sir, no.

Q. Well, what was the nature of it?

A. I don't recall any of the figures. Mr. Baum—

The Court: You are not asking for figures, I believe, are you?

Mr. C. Huntington Jacobs: No, sir.

Q. I am asking you what kind of stuff you had as stock in trade?

A. As stock in trade we had pine lumber and moldings, plywood, and some doors at that time.

(Testimony of George F. Elliff.)

The Court: And some what?

The Witness: Some doors.

Q. (By Mr. Jacobs): Now, what in your opinion was the reasonable value of that stock in trade at that time?

A. It would be a rough estimate, but I would say twenty thousand or better.

Q. Well, how much better, can you give us a maximum?

A. It wouldn't exceed twenty-five, I don't believe, sir.

The Court: What?

The Witness: It wouldn't exceed \$25,000.00.

Q. (By Mr. Jacobs): Now, what other property did you have at [129] that time, physical property?

A. Only the lot on Mount Hamilton Road.

Q. Did the business have any equipment?

A. It had a truck and a fork lift, yes, sir.

Q. And what in your opinion was the reasonable value of the equipment?

A. Oh, the equity in both might have amounted to \$2,000.00.

Q. And by equity, what do you mean, explain that.

A. The money that we put in, down payments and the payments we made against the balance owed.

Q. And what in your opinion was the value at that time of the lot that you referred to?

A. \$2,500.00, I'd say.

(Testimony of George F. Elliff.)

Q. And at that time how much money in the aggregate did you owe approximately?

A. I don't think I'd miss it far by saying fifty thousand dollars.

Q. Now did any of that \$50,000.00 include obligations of that partnership, the Hodes Elliff partnership I mean?

A. Not in September, no, sir. It did in—it did in this sense that I had taken over certain liabilities from Mr. Hodes that hadn't been liquidated. But as far as the partnership dissolution, I believe I paid him off in August or July.

Q. You mean you had paid Mr. Hodes but there were still obligations of the business, of the partnership business, that [130] you had not paid, is that right?

A. That is correct.

Q. Can you approximate the amount of those?

The Court: I don't understand that. If there are some detailed figures of what they are or how they are made up, counsel, I would rather have it. I don't know what you are talking about, obligations of a business. Now I don't know what business it is. He said that he took over from Hodes. I don't know what you are talking about.

Mr. Jacobs: Oh.

Q. Mr. Elliff, you had been in business with Mr. Hodes?

A. That is correct.

Q. Now what was the nature of that business in which you were engaged with Mr. Hodes?

A. Pine lumber and moldings.

Q. And was it different from the business that

(Testimony of George F. Elliff.)

you were conducting in September of 1953?

A. No, sir, no difference.

Q. Same business?           A. Same business.

Q. And you told us that when you dissolved this partnership you took over its liabilities—I mean you undertook to pay them?

A. Right, I did.

Q. Without any contribution from Mr. Hodes?

A. That's correct.

Q. And I am asking you now if you can approximate the amount of those partnership obligations which you undertook at the time of dissolution of the partnership which had still not been discharged in September of 1953?

A. I'd say between five and eight thousand dollars.

The Court: Well, Mr. Elliff, when you were in business with Hodes weren't you operating under the name of Pine Supply Company?

The Witness: Abbott Lane Pine Supply. We dropped Abbott Lane Supply——

The Court: And you had used the name Pine Supply before Hodes had left, hadn't you?

The Witness: Only for a month.

The Court: And you continued on with the name of Pine Supply. Now how did you distinguish the obligations of Pine Supply before that time and after that time? Weren't they all the obligations of that same company?

The Witness: Well, we chopped it off when Hodes walked out or when I bought him out. And



(Testimony of George F. Elliff.)

from there on he was no longer obligated for any liabilities of the company.

The Court: But you were?

The Witness: I was, yes, sir.

The Court: But as far as your creditors were concerned, weren't you doing business under the name of Pine Supply Company? [132]

The Witness: Abbott Lane Pine Supply is where the obligations fell under the name.

The Court: Well, if there is some distinction there, counsel, I think it should be brought in to know what it is.

Mr. Jacobs: The sole purpose of this, your Honor, is to show the fact that some of these obligations which appeared on their books in September when this inventory and this examination of the records was made, had been outstanding since the days of the partnership, quite a considerable period of time.

The Court: All right, if that is the purpose of it I will——

Mr. Jacobs: Yes, sir.

Q. Now when did you start this business with Hodes? A. November 1st, 1952.

Q. And did these obligations that you undertook and had not discharged in September of 1953 include any that were incurred during the Fall of 1952?

A. No, sir. The Winter and Spring of 1953, I believe, would be correct.

Q. I see. Now did you ever discharge all of

(Testimony of George F. Elliff.)

those old obligations that had been undertaken by you at the time of dissolution; did you ever discharge them all?      A. No, sir, I didn't.

Q. Some of them are still outstanding, is that correct?      A. That's right. [133]

Q. And what were they, what were they for?

A. Lumber, purchase of lumber. I don't think there is anything outside of lumber.

Q. In fact, how much if any of the eight or nine thousand dollars of obligations you have just referred to have ever been discharged?

The Court: Did he say eight to nine thousand dollars?

Mr. Jacobs: That was my understanding.

The Court: I have five to eight.

Mr. Jacobs: I stand corrected. I am sorry, a lapse of memory.

The Witness: The figure that I remember is \$4,200.00 that wasn't——

Q. (By Mr. Jacobs): \$4,200.00 that was not?

The Court: Was not?

The Witness: Discharged at the end of the operation.

Q. (By Mr. Jacobs): And that is still outstanding?      A. That is, they are.

Q. Those debts are still outstanding?

A. They are.

Q. Mr. Elliff, subsequent to the October transaction that you have described, the execution of the note and of the trust agreement and the turning over of the trust receipts of the warehouse receipts,

(Testimony of George F. Elliff.)

subsequent to that did you continue that business?

A. I did.

Q. Did it ever make any money after that?

A. No, sir, I don't believe it did.

Q. Under your trust agreement, twenty per cent of the gross proceeds, as I understand your testimony, and the agreement, was reserved to make payments on account of this note? A. Correct.

Q. For \$28,000.00? A. Correct.

Q. Was the remaining eighty per cent sufficient to pay the running expenses of the business, current expenses of the business?

A. No. The twenty per cent was the gross profit that we could realize out of the sale of the material.

The Court: Read that.

(Answer read.)

Q. (By Mr. Jacobs): Do you mean that the twenty per cent represented the entire gross profit of operation? A. Just about.

Q. You did, however, continue the business for some time after the October transaction, you said. How long did you continue it?

A. Until the end of June, if I am correct, 1954.

Q. During that period of time did you make purchases of inventory—I mean purchases of merchandise for your inventory? [135]

A. Yes, I did.

Q. When I say inventory, I mean stock in trade. Is your answer still the same? A. Yes.

Q. And what did you do with the stock in trade, as you bought it?

(Testimony of George F. Elliff.)

A. I put it in the warehouse receipts.

Q. And what instructions did you give the warehouseman when you did so?

Mr. Shapro: If your Honor please, I object to that question upon the ground it is hearsay, self-serving and not binding on Twin City Lumber Company.

The Court: What is the purpose of it, counsel?

Mr. Jacobs: To show that the agreement was executed, your Honor, the agreement required that they—that all inventories then on hand or thereafter required those to be represented by warehouse receipts which were to be given to Mrs. Lannin.

Mr. Shapro: But the receipts were to go to Mrs. Lannin, not to Twin City.

The Court: All right, go ahead.

The Witness: I instructed her upon receipt of invoice to make out the necessary non-negotiable paper on Douglas guardian, non-negotiable paper, and to send them to San Francisco [136] which we always did.

The Court: Wait a minute. I don't quite understand your answer. Will you keep your voice up?

The Witness: I am sorry. I have a paralyzed nerve.

Q. (By Mr. Jacobs): You were in an automobile accident, were you not? A. That's right.

Q. And it resulted in an injury to your neck?

A. Right.

Mr. Jacobs: I merely mention that by way of explanation, your Honor.

(Testimony of George F. Elliff.)

The Court: All right.

Q. (By Mr. Jacobs): Will you give us that answer again, Mr. Elliff, specifying whom you mean by her?

The Court: The question was, what instructions did you give the warehouseman. Answer that question if you will.

The Witness: Well, as you are well aware, the warehouse people insist or demand that there is a custodian on the property at all times, which is in their employ.

The Court: Yes.

The Witness: And that is called a field warehousing manager of which we always had one, a bonded representative of Douglas guardian which was Mrs. Barnhart also. She was always instructed by me to take the invoice which gave her the tally, the amount of each item that came in. And that was [137] counted and listed on their warehouse receipts. In turn, it was sent in to San Francisco and in turn I suppose it came up to Mrs. Lannin in the form of non-negotiable receipts.

Q. (By Mr. Jacobs): Did Mrs. Barnhart serve you in any other capacity at this time?

A. She did the invoicing, kept the books.

Q. Was she also your bookkeeper?

A. Yes, sir.

Q. And how was her salary paid?

A. By the Douglas Guardian Warehouse people.

Q. And who supplied the money for that?



(Testimony of George F. Elliff.)

A. They would bill me monthly, I believe, or semi-monthly.

Q. For the amount of her salary?

A. Yes, sir.

Q. You say that you continued business until sometime in June of 1954? A. That is right, sir.

Q. Was there any particular occasion for your ceasing business?

A. I was attached by Harbor Plywood Corporation.

Q. Was a keeper put in charge? A. No, sir.

Q. Was that the only attachment?

A. More followed, but that was the first one.

Q. That was the first one? [138]

A. That was the first one.

Q. And what was it that was attached?

A. The entire stock in trade.

Q. The business did not operate after that, right? A. No, sir, it didn't.

Q. Now Mr. Elliff, when that attachment was levied, do you know what, if any, assertion was made of Mrs. Lannin's rights of the trust agreement?

Mr. Shapro: If your Honor please, I am going to object to the question on the ground that it calls for the opinion and conclusion of the witness. It calls for hearsay. The best evidence of any action would be documents, whenever they were filed.

Mr. Jacobs: I don't see that counsel's objection can be sound, your Honor. I asked the witness whether he knew of his own knowledge was there

(Testimony of George F. Elliff.)

any assertion that was made of her rights.

The Court: He could answer that yes or no.

Mr. Jacobs: That's all.

The Court: All right.

The Witness: Yes.

Q. (By Mr. Jacobs): You do? A. Yes.

Q. How do you know? A. I was present.

Q. You were present?

A. When the Sheriff led the attachment and when Mrs. Barnhart refused him entrance to the warehouse.

Q. And were you also present in Court on any proceedings that were taken in connection with the trust agreement? A. I am quite sure I was.

Q. When did those proceedings take place?

Mr. Shapro: I submit, if your Honor please, and object upon the grounds that the record, the Court record, if there was a Court proceeding, is the best evidence.

The Court: Well, we are not going into what happened. He just asked when it was, when the Court proceedings were.

The Witness: October, I believe, 1954.

Q. (By Mr. Jacobs): In October?

A. To the best of my recollection. Maybe I misunderstood the question.

Q. Do you know what a third party claim is?

A. Yes, sir.

Q. Was any made by Mrs. Lannin, to your knowledge?

Mr. Shapro: I object to that upon the ground

(Testimony of George F. Elliff.)

that the documents of the Court would be the——

The Court: Sustained.

Q. (By Mr. Jacobs): May I have a moment to consult my notes?

When did you employ Mr. Baum as auditor?

A. In May of '53, I believe. [140]

Q. Did you supply to Mr. Baum all of the records of the business? A. I did.

Q. Did you supply to him also the records of your private affairs, I mean, your financial affairs extraneous to the business?

A. Not in writing, but verbally I am quite sure I did.

Q. You have already answered that you told us that you had employed him to audit the account between yourself and Mr. Hodes and——

A. We set up a set of books for Pine Supply Company.

Mr. Jacobs: I see. I think you can have the witness.

The Court: It is entirely up to you gentlemen, of course, but some suggestion was made yesterday about calling Mr. Baum. You couldn't finish with him in the afternoon. I wondered whether you wanted to defer your cross examination at this time until after Mr. Baum.

Mr. Shapro: That would be agreeable.

The Court: If you start now you may be able to finish Baum.

Mr. C. Huntington Jacobs: Yes, your Honor. If it will help Mr. Baum and facilitate matters, I

am perfectly willing to do that and I am sure Mr. Baum would appreciate that.

JOE N. BAUM

a witness called on behalf of the plaintiff, being first duly [141] sworn, testified as follows:

Direct Examination

Q. (By Mr. C. Huntington Jacobs): Please state your name and occupation for the record.

A. Joe N. Baum, B-a-u-m. I am a Certified Public Accountant.

Q. Where do you practice as such, Mr. Baum?

A. San Jose, California.

Q. You are of course duly licensed under the laws of California as a Certified Public Accountant?

A. I am.

Q. And you have heard the testimony of Mr. Elliff?

A. I have.

Q. And you were licensed as such, I take it, during the period he has mentioned of your employment by him?

A. Yes.

Q. Did you receive from Mr. Elliff at the time of your employment subsequently the records of the business known as Pine Supply Company?

A. I did.

Q. And by the way, what is your recollection as to the date of your employment?

A. It was either around the latter part of June or the beginning of July.

Q. I see. A little later than he indicated.

The Court: What year? [142]

The Witness: 1953, sir.

(Testimony of Joe N. Baum.)

Q. (By Mr. Jacobs): And what were you employed to do?

A. I was employed to do three things. First to set up a system of records keeping for the present Pine Supply Company, of which he was the sole owner. Secondly, to go back and determine what equities were his or his equity was in the business at the time he commenced operations. Third, to audit the records of the partnership to determine whether the price paid Mr. Hodes was correct as per the terms of the dissolution agreement.

Q. I don't quite understand when you say whether the price was correct.

A. According to my recollection, the dissolution agreement stated that a certain consideration was to be paid to Mr. Hodes at the time, but that the records and affairs of the partnership were subject to audit. And at that time the audit was complete. Any adjustment that would have to be made would be made at that time.

Q. Now did Mr. Elliff to your knowledge subsequently pay the price to Mr. Hodes?

A. Yes, he did. I think in the final settlement there was a reduction in the amount of the consideration that amounted to between three and four hundred dollars.

Q. What altogether did Mr. Elliff pay Hodes according to the records that you examined under your personal knowledge? [143]

A. It was in the neighborhood of \$5,000.00 or more.



(Testimony of Joe N. Baum.)

Q. Now did you examine the records of that partnership to determine what assets it had and what liabilities at the time of the dissolution it had?

A. Yes, I did.

Q. And what was your finding regarding its net worth at the time——

Mr. Shapro: I object, if your Honor please, upon the ground that the records of the business would be the best evidence. In other words, the opinion of the witness with respect to net worth is not in evidence. The evidence is what were the assets and liabilities as he found them.

Mr. Jacobs: May I suggest that with the taking of a long and involved and intricate account would be involved and the Court has before it an expert witness who has examined the accounts, as this witness says he has done. This may be taken by the Court and it may be contradicted later if the opposing party wishes to do so by the records themselves.

The Court: My recollection is that people of this profession have records and balance sheets. Why not have them if they are here?

Q. (By Mr. Jacobs): Have you them?

A. I brought with me the final partnership income tax return which was submitted.

Q. Did you prepare it? [144]

A. I did. I have the pencil copy from my work papers there.

Q. Do you have the work sheets with you?

A. Yes, I have.

Q. And where is that document? This is your

(Testimony of Joe N. Baum.)

draft, is it?           A. Yes, it is.

Q. Now specifically this document you are showing me is what, for the record?

A. It is a pencilled copy of the Federal Income Tax partnership return which was filed sometime in the latter part of 1953 which represents the operation and the closing balance sheet of the Hodes-Elliff partnership as of the date of dissolution. And my date—from the record I could examine it—the partnership terminated on or about May 20th of 1953. And on the back of the income tax return is a balance sheet which shows the equities of the two partners at that time.

If I might add, Mr. Jacobs—this is also for Mr. Shapro—any figure with a parentheses around it means a minus or a deficit account.

Mr. Shapro: I understand.

The Court: Mr. Shapro is an expert upon deficit accounts.

Mr. Shapro: That is a dubious distinction.

Q. (By Mr. Jacobs): Well, so that this may be more specifically described, I take it that what you handed me here is a pencilled copy of the balance sheet which formed part of [145] that income tax return, is it not?

A. Well, there is a separate schedule that goes with it. The income statement which I can get for you, and if you want attached to it——

Q. Have you got it with you?

A. I will find it. I just grabbed these files out of the office late last night.

(Testimony of Joe N. Baum.)

Q. Does that make any change?

A. No, sir. All in the schedule would be the income statement which ties into the tax return. That is all.

Mr. Shapro: If it was part of the tax return, I think we should have it all.

Q. (By Mr. Jacobs): Now what I am holding here, I take it, Mr. Baum, is a pencilled copy of the balance sheet forming part of the return, also of the reconciliation of partners, capital account?

A. That's right.

Q. And the partners' share of income credits together with a statement of the income of the partnership during the period of its operation?

A. That is correct.

Q. And these you compiled from the records of the partnership, is that correct? A. Yes, sir.

Mr. Jacobs: I offer this in evidence as Plaintiff's [146] next in order.

The Court: Exhibit 9 in evidence, Plaintiff's Exhibit 9.

(Thereupon the foregoing document was introduced and marked as Plaintiff's Exhibit No. 9 in evidence.)

Q. (By Mr. Jacobs): Now from these figures which you compiled, Mr. Baum, are you able to tell us what the net worth of that partnership was at the time of dissolution? A. Minus \$2,208.18.

Q. Now did you also examine the records of Mr. Elliff's assets and liabilities extraneous to the Pine Supply Company? A. Yes.

(Testimony of Joe N. Baum.)

Q. You did? A. Yes, I did.

Q. And have you compiled figures showing that Mr. Elliff's assets and liabilities were altogether, both extraneous and in the business at the time of dissolution of that partnership?

A. No, I did not.

Q. Do you know what the assets and liabilities of the Pine Supply Company were at the time mentioned by Mr. Elliff when Mr. Ramsey examined the records of the company?

Mr. Shapro: Your Honor, may I have the question read?

The Court: Read the question.

(Question read.)

Q. (By Mr. Jacobs): I am just asking him for yes or no. [147] Did you or don't you?

The Court: Wasn't that given in the evidence when Mr. Ramsey——

Mr. Shapro: Approximately September 30th, September 30th of '53.

Q. (By Mr. Jacobs): I will ask the witness some other questions to begin with and bring him to that point.

You say that you commenced your services as auditor of the business as I understand it in June or possibly as late as July, is that correct?

A. That's correct.

Q. And from then on until the 10th of July, 1954, did you serve as auditor of the business?

A. No, I did not.

(Testimony of Joe N. Baum.)

Q. Throughout what period or periods did you serve as auditor?

A. Oh, I didn't do any work on the Pine Supply Company books after making out Mr. Elliff's income tax return at the end of 1953 and setting up a new set of books for the beginning of 1954.

Q. You say you didn't do any work on the books. Who did keep the books after that time?

A. After that time, Mrs. Barnhart.

Q. Did you have any part in the operation of the business either as auditor or otherwise after that time? [148]

A. No.

Q. Did you visit the place of business?

A. Oh, once or twice.

Q. And did you take part in any of these negotiations that have been mentioned by Mr. Elliff in your hearing?

The Court: That is a pretty broad statement.

Mr. Shapro: That is a broad question.

Mr. Jacobs: I asked him if he took part in any of them.

Mr. Shapro: That is a pretty broad——

The Witness: Are you, Mr. Jacobs——

Q. (By Mr. Jacobs): I will withdraw it and ask you a more specific question.

Did you in company with Mr. Elliff have any conference with representatives of the Twin City Company or Twin City Lumber Company?

A. I did.

Q. And did you meet a gentleman by the name of Mr. Ramsey?

A. I did.



(Testimony of Joe N. Baum.)

Q. Now, did you have any conference with Mr. Elliff and Mr. Ramsey at the place of business of Pine Supply Company during the month of September, 1953? A. I did.

Q. Did you have some conference during which, or a series of conferences during which the records of the business were examined, records of Pine Supply Company? [149] A. Yes.

Q. Now when did that conference take place or that series of conferences?

A. It was in the latter part of September of 1953.

Q. Was there one conference or more than one?

A. Well, I distinctly remember one.

Q. And you say on that occasion the records were examined by the parties present?

A. That's right.

Q. Did Mr. Ramsey examine them again, then?

A. Yes, he did.

Q. Now, did the records at that time show the assets and the liabilities of the business?

A. At the time the books of account were not quite complete.

Q. In what respect were they incomplete?

A. Because—if I can explain it, it's a rather lengthy answer to the question.

When I was engaged by Mr. Elliff, he had no formal books of account at all either for the partnership or for the new business which he was operating himself.

And in order to establish a starting point I had

(Testimony of Joe N. Baum.)

to go back and try to accumulate all this information of what had happened before and at the same time set up a set of books and accounts that could at least accurately record the transactions that took place after Mr. Elliff ran the business himself.

And it was in September that some of those records were still missing. But there were records recording purchase of sales, cash receipts, and cash disbursements from the date that Mr. Elliff started to operate the business himself.

Q. I see. Now did the records completely show the liabilities of the business at that time?

A. Yes, they did.

Q. And did they completely show the assets of the business at that time?

A. Not completely, no.

Q. Well now, in what respect were they incomplete in showing the assets; what assets did they fail to show?

A. The assets that they failed to show were some of the accounts receivable that were taken over at the time that Mr. Elliff commenced doing business himself.

Q. Have you since found any of the records that you found to be missing at the time?

A. Well, the books were finally completed and tied up in time to complete the tax return for the year of 1953.

Q. I see. Now then what was the amount of the receivables that were—not that the business actually had—but that the records failed to show?

(Testimony of Joe N. Baum.)

A. Well, as close as I could compute them, they amounted to \$4,400.00.

The Court: What did? [151]

The Witness: The accounts receivable that were taken over from the partnership by Mr. Elliff operating as a sole proprietor.

Q. (By Mr. Jacobs): Was that the total that was taken over?

A. As close as I could determine, yes.

Q. And what did the books show at the time of this examination regarding the amount of the accounts receivable that had been taken over?

A. We, instead of examining the books, Mr. Jacobs, at that time we took every unpaid invoice and made a tape of them. We taped them up and also taped up the unpaid bills, as many as we could find that were on file on the company's premises.

Q. This is what you did at the time of this examination of the affairs of the business in September. Now, did you in that manner ascertain accurately at that time the liabilities and the assets of the business? A. We did.

Q. Although the books did not show them, the invoices accurately, the invoices that you used in compiling your account at that time did, is that your testimony? A. Yes, sir.

Q. What physically were the assets of the business at that time, what did they consist of?

A. They consisted of stock in trade; they consisted of two pieces of equipment, the fork lift and a Dodge flat bed delivery [152] truck; they con-

(Testimony of Joe N. Baum.)

sisted of some accounts receivable and a few pieces of office equipment.

Q. There was a stock in trade, I take it?

A. Yes, sir.

Q. And what did that consist of?

A. Pine lumber, pine molding, some doors and some plywood, and a few, possibly a few odd items of merchandise.

Q. Now, Mr. Baum, have you been engaged in any other business than the profession of accountancy?      A. I have.

Q. What is that business?

A. For close to two years I was comptroller and general manager of a plywood manufacturing corporation and a sawmill corporation and a timber corporation.

Q. Where?

A. Northern California.

Q. Now how long prior to your services as auditor of this business were you so engaged?

A. My employment wound up possibly a year before I was employed by Mr. Elliff.

Q. Were you at the time of this examination familiar with the current values of the merchandise comprising the stock in trade, assorted merchandise that comprised the stock in trade of this Pine Supply Company?

A. Only to the extent that I saw the prices listed on the [153] invoices, Mr. Jacobs. I should add I knew about what plywood marketed for because I had made it and I had fairly well kept in touch

(Testimony of Joe N. Baum.)

with it. But I had never had anything to do with pine lumber or pine molding except from my experience with the Pine Supply Company.

Q. The invoices you have showed the prices that they had been getting for this merchandise, did they?      A. Yes, sir.

Q. Now on the basis of what you knew about the market value of these items of merchandise, plywood and the rest of the lumber, can you tell us what the fair market value of it was at the time?

Mr. Shapro: I object to that question, if your Honor please, upon the ground that no proper foundation has been laid. The witness has said he is not qualified. If he wants to give the book figures I have no objection. But his opinion as to fair market value, I don't think he is qualified.

The Court: Do you have the figures from the invoice?

The Witness: I haven't got all the Pine Supply invoices here, your Honor.

The Court: Do you have a recapitulation of them?

The Witness: No, because the inventory figure that we took at the time was the inventory that was listed on the summary of the warehouse receipts. In other words, the warehouseman had to keep a perpetual inventory and rather than go [154] and take an actual physical account at that time, since time was rather urgent, we went and got the figures from the perpetual inventory that the field ware-



(Testimony of Joe N. Baum.)

houseman or the manager of the field warehouse kept, sir.

The Court: Do you have that?

The Witness: No, sir. They were never my property.

Mr. Shapro: May I ask a question at this point because maybe I am confused, certainly I could be. We are talking about the end of September. The field warehouse was started in May?

The Witness: That is right.

Mr. Shapro: And you never had the field warehouse certificates in your possession?

The Witness: No, sir.

Mr. Shapro: May I ask how you got the account on May 30th?

The Witness: The warehouseman had to keep a perpetual inventory of everything that came in and everything that went out of the warehouse. And so in September when we had to get an inventory figure, we went to that perpetual inventory, which was the property of the Douglas Guardian Warehouse Company. It was not mine at all.

Q. Did you make notes at the time of the figures?

A. No, because Mr. Ramsey had all those figures and he was using them for his own purpose to list assets, liabilities. [155]

Mr. Shapro: Thank you, your Honor.

Mr. Jacobs: I will withdraw the previous question.

(Testimony of Joe N. Baum.)

Q. Do you remember approximately what that figure was?

A. It was in the neighborhood of \$25,000.00.

The Court: That's of the merchandise that was in the warehouse?

The Witness: Yes, sir.

Mr. Jacobs: Q. Now what was the markup that you observed from the invoices?

A. Well, there was no constant markup, Mr. Jacobs. First of all, especially in the matter of plywood where there was a fluctuating market price; one would like to mark it up say  $33\frac{1}{3}$  per cent or 30 per cent. But sometimes the actual economic conditions make you sell things like that at little above cost.

Q. On the basis of the invoices they had been rendering for this merchandise, what was their average markup, what did they take?

Mr. Shapro: If you know.

Mr. Jacobs: Q. If you know.

A. If I remember correctly, it was between twenty and twenty-five per cent.

Q. Did the books show whether the truck—I think you said the flat bed trailer——

Mr. Shapro: Lift. [156]

Mr. Jacobs: Q. Lift?

A. The fork lift and the—I can tell you that in a second, Mr. Jacobs. I brought the books of account with me. Yes, they did.

Q. They did? A. Yes, sir.

Q. Now, what was this truck?

(Testimony of Joe N. Baum.)

A. Oh, it was a Dodge, I think a 1951 Dodge truck with a 16 foot bed on it.

Q. And what was the price of it?

Mr. Shapro: You mean the cost price?

Mr. Jacobs: No. I am driving at the equity in it, if there was any.

Mr. Shapro: Well, your Honor, I don't think the witness is qualified. I object upon the ground that no proper foundation has been laid.

Mr. Jacobs: The books showed what the man agreed to pay for it.

Mr. Shapro: If the books have the figures, I will agree to it, your Honor.

The Court: What is the cost, you say? This was a '53 truck?

Mr. Jacobs: Yes, this was a '53.

The Witness: Yes, sir. The book value of the truck was \$3,685.02. [157]

The Court: That is the purchase price?

The Witness: Yes, sir, taking into account the trade-in that was traded in on an old Chevrolet truck, I think, was traded in at the time.

Mr. Jacobs: Q. And how much, if anything, was owing upon it, referring to this time of this examination? A. Roughly \$2,900.00.

Q. Was this a flat bed trailer or separate from the truck, did you say?

A. No. The truck was a delivery truck with a cab and then a flat bed.

Q. And that's all included in the price, indebtedness that you have mentioned? A. Yes.

(Testimony of Joe N. Baum.)

Q. Now then there was also a lift?

A. Fork lift.

Q. And what was the book value of that at the time?      A. \$3,399.00.

Q. And how much was owing on that at the time?      A. About \$1,920.00, roughly.

The Court: When was that purchased?

The Witness: Approximately the same time, sir, about the beginning of May.

Mr. Jacobs: Q. I don't recall that you mentioned any other assets of this business or not. Were there any?      [158]

A. Well, there was some office furniture.

Q. Was that given a book value, does that appear on the books?

A. There was roughly \$470.00 worth of furniture and fixtures. And then the counter that was built outside, that possibly could be moved, that cost \$87.55. So altogether there was about \$557.00 worth of other assets.

Q. Was there money owing on that?

A. At the time I think the desk and the—there might have been \$150.00 owing on the desk and the other office equipment.

Q. How about lighting fixtures and so on?

A. They came with the establishment, such as they were.

Q. I see. Elliff didn't own them?      A. No.

Q. And the furniture was paid for, was it, except for the——

A. I am talking about the office furniture, a

(Testimony of Joe N. Baum.)

desk and a couple of chairs, it ran about \$150.00 or something like that.

Q. Now what were the liabilities of the business at the time, the debts of the business at the time?

Mr. Shapro: Your Honor, I hate to interrupt counsel, but we don't have the accounts receivable. We are getting into liabilities and the assets aren't finished.

Mr. Jacobs: Q. I thank counsel for the suggestion; yes, we should cover that. What were they; what was the face [159-A] amount of the accounts receivable at that time?

A. I would say that as of the end of September the accounts receivable were in the neighborhood of \$25,000.00.

Q. Now, can you give those—can you segregate those by date?

A. Well, the only way I can segregate them by date—

Q. Ninety days?

A. The sales in September were roughly \$13,000.00; the sales in August were roughly \$17,500.00; and the sales in June—I mean in July were roughly \$13,000.00.

Now you could say that at least \$10,000.00 or \$11,000.00 of those receivables were September receivables and approximately twelve or \$11,000.00 because some of Mr. Elliff's customers were rather slow in paying. And the balance went back, July, and some even tag on until June and May.

Q. Some of them even in June and May?



(Testimony of Joe N. Baum.)

A. Yes, sir.

Q. Can you approximate the amount of the May receivables?

A. Well, the only way I can approximate that now is because at the end of the year we set up a reserve for bad debts in the amount of \$1,886.00, which would represent most of the bad debts that existed prior to September 30th because there weren't very many after that. He was a little bit more careful with whom he did business with.

Q. Now when if at all did you again examine—after your [159-B] employment as auditor terminated—when did you again examine the accounts of the business?

The Court: Well, now you haven't finished.

Mr. Jacobs: I haven't got to liabilities.

The Court: Let's take a recess at this time and go into the liabilities after.

(Recess.)

Mr. Jacobs: Q. Can you tell us, Mr. Baum, what the business owed at the time of this examination of its affairs in September?

A. It was in excess of \$50,000.00.

Q. Can you give us the exact figure or approximate it?

A. Yes. Approximately there was roughly \$28,000.00 owed to the Twin City Lumber Company. The others payable, I'd say, were in the neighborhood of \$12,000.00 or \$13,000.00, something like that. The unpaid balances on the equipment contracts were in excess of \$4,000.00 and at that time, just

(Testimony of Joe N. Baum.)

on the business operation of the Pine Supply business by Mr. Elliff as the sole proprietor, he owed his mother-in-law, Mrs. Lannin, \$7,000.00.

Q. Now have you enumerated all of the liabilities that have appeared on the records of the business?

A. Those were the only liabilities that would appear on the company records. Any sums that he might have borrowed from other people and [159-C] not deposited and that I had no knowledge of would not appear on the books of the account for the Pine Supply business.

Q. What part of the liabilities of the business at that time consisted of debts that had originally been contracted by the Elliff Hodes partnership?

A. I think they were in the neighborhood of \$5,000.00.

Q. And are you able to tell us the date of the earliest indebtedness of that category?

A. No. I can't tell from my records but I know from examining some of those invoices that they dated back as far as the beginning of the year, 1953, I would say in January or February.

Q. And can you tell us how much of them dated back that far?

A. Oh, at least a couple of thousand dollars of that \$5,000.00.

Q. Did you do any work in connection with the financial affairs of the business subsequent to the end of the year, 1953?

A. Yes, I did.

(Testimony of Joe N. Baum.)

Q. Before we get to that, I should have asked you this.

Did you compile the records of the business as of the end of 1953? A. I did.

Q. And have you got your figures [160] representing that compilation? A. I have.

Q. Will you produce them, please?

A. I have a copy of the income schedule that was attached to Mr. Elliff's income tax return and the sheet. It shows a loss of \$7,603.30. This is a part of the schedule which has not been attached to it.

Mr. Shapro: Is there a balance sheet there?

The Witness: Yes. I think I have a copy of the year end balance sheet. If not, I know I have furnished Mr. Jacobs, C. Huntington Jacobs, with one.

Mr. Jacobs: Q. I will see if I have it. This is the income account, I take it, the document you are handing me here, this is your pencilled draft of the return? A. Of the return that I had typed.

The Court: Of what?

The Witness: Of Mr. Elliff's income tax return, sir.

The Court: For what period?

The Witness: For the calendar year 1953.

Mr. Jacobs: Q. This document which you have handed me consists of two pieces of paper, one the income tax form filled in in pencil and the other a typewritten schedule C?

A. That is correct. And did you ask for a copy of the balance sheet, Mr. Jacobs?

Mr. Shapro: I did. [161]

(Testimony of Joe N. Baum.)

The Witness: I have one right here. It shows a deficit in the capital account of \$17,103.00, sir.

Mr. Jacobs: Q. This income tax return and the Exhibit attached to it were compiled by you from the records of the business?

A. Yes, sir, they were.

Q. And also from Mr. Elliff's records. Does this include his income from all sources?

A. This only includes the income from the Pine Supply business from the date that he operated it as a sole proprietor. The other——

Mr. Shapro: You told the Judge it was for the calendar year 1953?

The Witness That's right. For the calendar year 1953, he operated the Pine Supply business as a sole proprietorship. His other income would be picked up from the amount of income that he would have to report from the partnership return, which I have just furnished you.

Mr. Shapro: So the record will be straight, your Honor, the income tax return—that is that part of the income tax return which Mr. Jacobs is now holding and to which is attached the document you prepared called Schedule C represents Mr. Elliff's income from the business of Pine Supply Company from the date of its inception as a sole proprietorship, which as I understand your testimony, was May 20th, 1953 to the end of the year? [162]

The Witness: That's right.

Mr. Jacobs: Q. That was my understanding. And it's true also of this as it was of the previous

(Testimony of Joe N. Baum.)

Exhibit, is it not, that the item that appears in parentheses or in these——

A. That is a deficit, a loss.

Mr. Shapro: I will be glad to stipulate to that, sir.

Mr. Jacobs: We offer this as the trustee's next in order.

The Court: Exhibit 10.

(The foregoing document was thereupon introduced as Plaintiff's Exhibit 10 in evidence.)

Mr. Jacobs: Q. Now what is this document that you are now examining, Mr. Baum?

A. This is a copy of a typed balance sheet that was furnished to Mr. Elliff upon his request showing his assets, liabilities, and net worth as of December 31st, 1953. It was furnished solely for his use and he was directed that it was not to be used for credit purposes or anything else. There is no mention on the balance sheet of the hypothecation on the inventory to secure the guarantee of the Twin City note.

In other words, it's just a statement of assets and liabilities. But it does not indicate that the inventory is secured or secures a guarantee of a debt.

Mr. Shapro: Just so we'll have the record [163] straight, by the securing of the guarantee of the debt, you mean Mrs. Lannin?

A. Yes. In other words, the inventory doesn't indicate that the inventory was warehoused or is subject to warehousing.

Mr. Jacobs: Q. Would this be a correct ex-



(Testimony of Joe N. Baum.)

planation of what you just said, that it does not for the reason you give, it does not reflect the trust agreement?           A. No, sir, it does not.

Q. But it does show what assets the business had and what liabilities it had as of December 31st, 1953, isn't that correct?           A. Yes, sir.

Mr. Jacobs: We offer this as trustee's next in order, trustee's Exhibit 11 in evidence.

The Court: Exhibit 11. Let me see that, please.

(Thereupon the foregoing document was introduced as Plaintiff's Exhibit 11 in evidence.)

Mr. Jacobs: May I see the last previous Exhibit.

(The Clerk hands Mr. Jacobs the last previous Exhibit.)

The Court: What are the fixed assets?

The Witness: They would be the fork lift, the truck, and the office furniture, fixtures, and equipment, sir.

The Court: And as against those fixed assets, your contracts payable mean the amount that is due on them? [164]

The Witness: Yes, sir.

The Court: Now you said a moment ago that—and I might preface it by saying that I can go so far with a Certified Public Accountant and then I get lost—I can go a little ways.

But you talked about there being an impairment of capital, \$17,000.00, what do you mean by that?

The Witness: In other words, sir, the book value of all the assets was less by \$17,000.00 at the end

(Testimony of Joe N. Baum.)

of the year than the book value of all the liabilities, the stated value of all the liabilities.

The Court: You mean that there was a loss? A loss during the year of \$17,000.00?

The Witness: Well, there was not only a loss during the year, but the capital was further impaired because Mr. Elliff had drawn approximately five thousand and some odd dollars out of the business for his own use.

The Court: Well then, you assumed that on May 20th he had a capital of \$2,500.00?

The Witness: Minus there were one or two other odd items that I had to uncover later that changed that figure slightly that I had showed from the partnership return here. But he started out the business with a minus or a deficit in his capital accounts. He lost money, approximately \$7,600.00 during the year.

The Court: And he drew \$5,900.00? [165]

The Witness: And he withdrew \$5,900.00.

The Court: And that is how you get \$17,000.00?

The Witness: Yes, sir.

Q. (By Mr. Jacobs): Do your records show month by month what the expense of the business was—I mean the Pine Supply Company as operated by Mr. Elliff as the sole proprietor? Do they show month by month what the expense of the business was in regard to earnings?

A. It does not.

Q. Well, neither of these records do. Do you have that information?

(Testimony of Joe N. Baum.)

A. No, sir, I don't, because as I stated before I actually started to work with the records some time—I am almost positive it was in July—and before we could get to the point where we could establish monthly earnings figures, I still had to go back and establish what Mr. Elliff started out with and at the same time was trying to work on the partnership records. So that the only thing that we used to do was at the end of the month, compare, take rough figures by comparing sales with what we knew were definite expenses such as payroll, rent, and things like that, and arrive at some sort of a tentative figure as to whether the business earned or lost money during the period.

Q. You did, however, do that?

A. Yes, sir. [166]

Q. Can you tell us during what months it made and during what months it lost money according to those figures?

A. The only possible times that the business could have made any money was July, August and part of September.

Q. And how much, if you were able to ascertain it, did the business make in July?

A. I don't have those figures, Mr. Jacobs, because they were all just done with Mr. Elliff and I sitting at a desk. But from my recollection the amount of money that could have been made during July was just a few hundred dollars at most, and I think during August it possibly made \$1,000.00 or more.

(Testimony of Joe N. Baum.)

Q. Well, can you fix a maximum amount?

A. Oh, I'd say twelve or thirteen hundred dollars.

Q. I see. And I think you said it might have made money during part of September?

A. Part of September. But then from the latter part of September on, the business was at a standstill because of the fact that there was a restriction, if I remember correctly, on the movement of inventory out of the place.

Q. Now how about the short balance of the month of May and the month of June?

A. In May the business lost money because of the fact that sales were only roughly \$2,465.00. Now that is just for the period of time that Mr. Elliff operated the business. If I remember correctly there was quite a bit of dissension between [167] the partners prior to that and I don't think that the sales amounted to very much for the partnership.

Q. Now as to the month of June?

A. The sales for the month of June were approximately \$6,500.00.

Q. And what was the profit, if any?

A. I wouldn't want to hazard a guess on it, but there was a loss.

Q. There was a loss?                      A. Yes.

Q. And can you approximate it?

A. No, I can't at this time.

Q. Subsequent to October 10th, 1953, what was the expense of the business?

A. In October, the sales were roughly \$3,060.00.

(Testimony of Joe N. Baum.)

Q. And they lost money?

A. Oh, I wouldn't know, but I would hazard a guess that it lost it.

Q. Well, what was the operating expense?

A. Well, when I speak about warehousing expense, I am speaking about the charges that Mr. Elliff would pay to the warehouse company which would include the salary of the bonded warehousemen.

Q. That was Mrs. Barnhart?

A. Whoever it might be, there were others, [168] if I remember correctly, than Mrs. Barnhart.

Q. Before her? A. Before her.

Q. And what was the operating expense then?

Mr. Shapro: For the month of October?

Mr. Jacobs: Yes.

The Witness: I have a record here of the bills from the Douglas Guardian for \$337.21. Warehouse salaries for the month of October were none. Auto and truck expense for that time were \$178.00, rent was \$252.00, travel expense for salesmen or Mr. Elliff, or for somebody to get out on the road and try to move the merchandise, was \$169.25.

The telephone bill during the month was \$227.82, stationery was \$1.03, insurance \$46.00 and a quarter, and interest and bank charges that were entered during the month came to approximately \$380.00.

Q. Have you enumerated all of the operating expenses?

A. I was paid \$300.00 in fees in October, mis-



(Testimony of Joe N. Baum.)

cellaneous expense amounted to \$60.00. Offhand I would say that those were substantially most of the operating expenses during the month.

Q. Now you haven't, I observe, included anything in the way of salary to Mr. Elliff. Was there any?

A. Well, in a sole proprietorship, Mr. Jacobs, you don't consider what the sole proprietor draws out. [169]

Q. I had in mind the terms of the trust agreement which you have read, have you not?

A. Yes. It allowed Mr.—if I remember correctly it allowed a drawing by Mr. Elliff of \$400.00 a month plus that the business was to pay for his automobile expenses and traveling around as part of the selling expense.

Q. Did he draw \$400.00 a month for that month or what did he draw, if anything?

A. In October I have two entries totalling \$9,-816.00 and fifty seven cents. But there are a couple of office receipts by journal entries amounting to a couple of hundred dollars which I had to check back and see what the entries are for.

Now it's very possible, as I say, that just because it's put in as his drawing account, it might have been put in for a specific purpose, because I do know that—this may be getting a little bit ahead of myself—I also had the records of Mr. Pasquinelli at the time that his capacity as trustee was terminated and for the period of time that Mr. Pasquinelli was the trustee, Mr. Elliff drew over that period

(Testimony of Joe N. Baum.)

of time substantially less than the \$400.00 a month average.

Q. What did he average?

A. I will see if I can get that, a copy of that audit. From October 8th, 1953 to March 23rd, 1954 Mr. Elliff drew the sum—the sum was charged to him of \$1,423.55. So you take October, November, December, January, February, times [170] five is that \$2,000.00. So his drawings for that period of time were substantially less.

The Court: I didn't get that. From what period?

The Witness: From October 8th, 1953, to March 23rd, 1954.

Mr. Jacobs: Q. What was the extent of the business in November, 1953?

I am not going too far with this, your Honor, I just want a couple of representative months.

The Witness: Well, you have got all the months so far. The sales for November of 1953 was \$7,-577.05.

Mr. Jacobs: Q. Did the business make money during that month?

A. I would have to hazard a guess and say no.

Q. Well, have you any figures showing what it spent during that time on current operations?

A. Yes, I do.

Q. Now don't give us unless counsel wants it in detail, but can you give us the over all figure?

A. No, I have to look at the individual ledger sheets, Mr. Jacobs.

(Testimony of Joe N. Baum.)

The Court: Counsel, you said he lost money in November. Now if counsel wants——

Mr. Jacobs: He said he would hazard a guess.

The Court: But he told us before he lost [171] money in November.

Mr. Jacobs: Q. All right. Did the business ever make any money during any month after October, according to its records, October of '53?

A. There again I would have to hazard a guess, Mr. Jacobs and say no, because after I prepared, you know, took the figures for the income schedule for 1953, the only other connections that I ever had with books of account were in the auditing of Mr. Pasquinelli's records, or else as you remember, when I checked with you about making Mr. Elliff's income tax return for 1954. And at that time, as I told you, the business, naturally, the business being taken away from, suffered a substantial loss for the year 1954. But I did not go back and analyze whether he had made any money month by month. I was just interested in tying matters up for the year.

Q. Well, you eventually did audit the records of the business just prior to this bankruptcy, did you not?

A. You mean did I actually physically audit them before he was put into bankruptcy?

Q. Yes. A. No. As I said——

Q. What did you do in that connection?

A. The last connections I had with Mr. Elliff,

(Testimony of Joe N. Baum.)

as a client, was that I prepared his 1953 tax return.

Q. I understand. [172]

A. And set up the books of account for 1954. And then it was a case of auditing Mr. Pasquinelli's records as trustee.

Q. And did you not prepare the records that were subsequently used in his bankruptcy?

A. No.

Q. You had no hand in preparing the schedules?

A. No. I am almost positive they were prepared by Mr. Pasquinelli.

Q. When the trustee in bankruptcy was appointed and qualified, he employed you, did he not?

A. He did.

Q. As an accountant. And did you not at that time examine the records of the business to determine—of the Pine Supply Company—and have Mr. Elliff personally determine what his financial condition had been at these various periods of time that we have just been mentioning?

Mr. Shapro: You mean month by month, the same months that you mentioned?

Mr. Jacobs: Yes.

The Witness: No, I did not determine them month by month.

Mr. Jacobs: Q. I see. Now were you advised at the time of the attachment that Mr. Elliff has mentioned which terminated the business, do you know about when it happened?

A. No. You mean the attachment of July 10th, around July 10th? [173]

(Testimony of Joe N. Baum.)

Q. In June of '54?

A. No, I was not notified at the time.

Q. Did you subsequently examine the records to determine what the condition—for anybody—determine what the condition of the business was at the time when it was closed down finally?

A. Yes, I did.

Q. Now, did you compile the figures showing the condition of the business at that time?

A. No. The only figures that I compiled and used were the ones which were used in compiling Mr. Elliff's income tax return in 1954.

Q. I see. Well now can you tell us whether the business made or lost money in 1954?

A. The business lost money in 1954.

Q. How did its expenses in 1954 compare with its expenses prior to October 6th, 1953?

A. It was not—the expense was not even as favorable.

The Court: When?

The Witness: In 1954, the expenses of the business was not as favorable as it was prior to October the—what did you say, October 6th?

Mr. Jacobs: Q. October 6th. A. 1953.

Q. You spoke of having attending conferences in the plural [174] between Mr. Elliff and representatives of Twin City Company? A. I did.

Q. Now what was the first of the conferences in that nature that you have attended and where was it?

A. Well, the one that I first definitely remember



(Testimony of Joe N. Baum.)

was the one that took place up in the Twin City Lumber Company offices in San Francisco.

Q. And when was that?

A. It was, as far as I can remember, it was in the latter part of August, 1953.

Q. Let me ask you, to carry your mind back to May of that year and specifically the first few days of May of that year.

A. I testified, Mr. Jacobs, that I was not employed by Mr. Elliff until——

Mr. Shapro: July.

The Witness: Until the latter part of June or the beginning of July, 1953.

Mr. Jacobs: Q. I see. So you did and you say that you attended the first of them that you can recall, you think, in August? A. Yes, sir.

Q. What part of August, so we can get a little more specific?

A. Oh, I am pretty sure it was the latter part of August.

Q. And who was there?

A. Mr. Ramsey was there, part of the time, I think, and Mr. Collins was there——[175]

Q. You are waving your hand back and forth, but that doesn't register on the record.

A. People were walking in and out of the little room we were sitting in. But I know very definitely that Mr. John Hunter was there.

Q. At all times? A. Yes, sir.

Q. And were the financial affairs of the business, of the Pine Supply Company, discussed on

(Testimony of Joe N. Baum.)

that occasion?           A. They were.

Q. And what was said and by whom in that regard?

A. One of the subjects discussed generally was the inability of Mr. Elliff to make payments on his account on their due date.

At that time Mr. Elliff and I had been working on plans to——

Mr. Shapro: If your Honor please, we are asking for a discussion, not for a history.

The Witness: Well, this all goes into the discussion, Mr. Shapro.

Mr. Shapro: But your discussion—if I may make an observation, your Honor, the question called for what was said and by whom.

Mr. Jacobs: That is true, it did.

The Witness: All right. [176]

Mr. Jacobs: Q. Now were these matters that you have just mentioned discussed at that time, the history of the business in making payments to Twin City?           A. That's right.

Q. They were?           A. They were.

Q. Who brought up that point?

A. If I remember, Mr. Hunter did.

Q. I see. The experience that he had had in receiving payments from Pine Supply Company?

A. That's right. And I think one other thing was brought up was the fact that upon at least one occasion or more the checks which had been sent in by Pine Supply Company had been dishonored when they were presented to the bank.

(Testimony of Joe N. Baum.)

Q. Now, who spoke of that?

A. If I remember correctly, Mr. Hunter did.

Q. I see. Now what else was said and by whom regarding the financial condition of the Pine Supply Company?

A. I remember remarking to Mr. Hunter among other things that I would try to see that Mr. Elliff did not send him another bad check.

Q. Now was there any discussion at that time concerning any new arrangement or any arrangement for taking care of the indebtedness of Pine Supply Company?      A. There was. [177]

Q. Twin City. And what was said in that connection at that interview?

A. Well, I remember telling Mr. Hunter that Mr. Elliff and I had been working on plans whereby we would put up the inventory which at the time was securing the Twin City account under the terms of this warehousing agreement and at the same time try to work out an arrangement where the accounts receivable of the business would be factored.

The Court: Would be what?

The Witness: Would be factored. In other words, they would be either sold to a financing agency with recourse in the accounts would be uncollectible or without recourse. And that then if we could make some arrangement with the Twin City Lumber Company and finance the stock in trade, which represented approximately the amount of money that Mr. Elliff owed to the Twin City Lumber Company, and pay in effect pay the accounts

(Testimony of Joe N. Baum.)

payable, as I like to call them, with a note that could be paid over a period of time, I think the business could develop enough volume to gradually bail itself out of the hole it was in. And since the prospects for business down in the San Jose area weren't particularly good, that the business could actually realize its potential.

Mr. Jacobs: Q. Is this what you told Hunter?

A. That was the general terms of the plan that I had outlined at that meeting. [178]

Q. And what was the occasion for your making these remarks to Mr. Hunter?

A. Well, as I say, Mr. Elliff and I went up to this meeting because of the fact that the Twin City Lumber Company at that time was very unhappy about Mr. Elliff's performance records as regarded payments.

Q. Well, was anything said at that meeting in the nature of a demand for payment by Mr. Hunter or by Mr. Ramsey or by Mr. Collins?

A. I can't remember who said what about a demand for payment. But the general impression that was given to Mr. Elliff and myself was the arrangements and more or less haphazard method of payment that was being paid up to that point was not going to be tolerated any further.

Q. Was anything said at that time about the continuation of the May agreement as to whether it was to continue in effect or was not?

A. Not as such.

(Testimony of Joe N. Baum.)

Q. What was said in that connection, if anything?

A. Mr. Elliff at the time had some—had a bank order of moving on file with the Twin City Lumber Company and he was informed—I don't remember which gentleman told him that, I think it was Mr. Hunter—that no further shipments were going to be made to him, that the order that he had on file at the molding mill was not going to be shipped until something else was worked out. [179]

Q. Now what was said about "Something else," was that defined?

A. It was Mr. Hunter himself, he did not define it.

Q. Who did?

A. But as I said before, when we were talking about this plan of possible consolidating all the debts and seeing if we could in effect finance the inventory, Mr. Hunter asked me how long I thought that it would take before we could possibly pay off this obligation. I remembered telling him three years.

Whereupon Mr. Hunter said they could not accept any longer payment than one year. I remember distinctly saying that if one year was all the time that Pine Supply Company could get, it was my recommendation that to my client to just wind up matters right then and there because it was a physical impossibility to pay off the amount owing to the Twin City Lumber Company in one year.



(Testimony of Joe N. Baum.)

Q. Have you told us all that transpired at that interview?

A. As much of it as I definitely can remember, Mr. Jacobs. The rest was just general discussion about the lumber business in general and the Pine Supply Company business conditions in particular.

Q. Was there any discussion about taking care of the bad checks that you referred to?

A. Well, at that time I think that all the checks that had been dishonored had been later on re-presented to the bank and honored. [180]

Q. Up to that time? A. Yes, sir.

Q. Now you continued as auditor of that business until the end of the year, I take it?

A. That's right.

Q. And tell us whether there were any other dishonored checks subsequent to that interview?

A. There were. There were several of them in September.

Q. Several in September? A. Yes, sir.

Q. Can you tell us the amounts of those? Of course, I am referring to checks that were given to Twin City Company.

A. These checks, as far as I could determine, were never honored. By honoring I mean solely being presented to the bank and payment being made on them. The disposition looks different.

The Court: Let's take a recess at this time until two o'clock. [181]

(Whereupon recess was taken until 2:00 o'clock p.m. of the same day.)

Afternoon Session

Tuesday, November 22, 1955

2:00 O'clock P.M.

JOE N. BAUM

resumed, previously sworn.

Direct Examination

Mr. C. Huntington Jacobs: Q. Mr. Baum, subsequent to this, the taking of this account with Mr. Ramsey in September of 1953, did you have any other interview with Mr. Ramsey?

Mr. Shapro: If your Honor please, I am going to object to the form of the question, to the use of the words "taking of account". It calls for the conclusion of the witness and assumes a fact not in evidence.

The Court: Well, it does.

Mr. Jacobs: I will withdraw it.

The Witness: I didn't mean it that way at all.

Mr. Jacobs: Q. Subsequent to the interview that you have referred to that you had with Mr. Ramsey during which the accounts of the business were examined, which I understand occurred in September of 1953, did you have have any interview with Mr. Ramsey?

A. Why, I saw Mr. Ramsey a few days later, yes.

Q. Where?

A. At Mr. Elliff's place of business.

Q. And who was there? A. Mr. Elliff.

Q. Besides Mr. Ramsey and yourself?

(Testimony of Joe N. Baum.)

A. Yes.

Q. Now was anything said at that time about a new arrangement between Twin City Company and Pine Supply Company or Mr. Elliff?

A. No. I think the occasion that I saw Mr. Ramsey next is when he came down and gave Mr. Elliff orders to close the warehouse up.

The Court: When was that?

The Witness: Oh, your Honor, I'd say within a very few days after the evening that we had spent going over the accounts receivable and accounts payable that I testified to before.

The Court: Well, that is the end of September, is it?

The Witness: Yes, sir, just around the end of September.

Mr. Jacobs: Q. And it was still in the month of September, was it?

A. I am pretty sure it was, Mr. Jacobs. It was right around the end of the month.

Q. And after that—well, withdraw that question.

Was any discussion had at that time about the financial condition of the business or the intentions of Twin City Company regarding it?

A. Well, if I remember correctly, Mr. Ramsey came down and said that he was—and gave Mr. Elliff instructions to release [183] the employees and to close the warehouse up, and that until something could be worked out, the warehouse was going to remain shut.

(Testimony of Joe N. Baum.)

Q. Now was anything said about what could be worked out at that interview?

A. I don't think at that particular time it was. There was nothing said about it.

Q. Was any subsequent discussion had about that?

A. Yes. I think that after Mr. Elliff notified the employees, we went over to the Hester Branch of the Bank of America.

Q. Now who is "we"?

A. Mr. Elliff, Mr. Ramsey, and myself. And I think our visit over there was to straighten out something about a check which had been given to the Twin City Lumber Company and upon which payment had been refused by the bank.

Q. I see. Well, what occurred on that occasion at the Hester branch?

A. The conversations that Mr. Elliff and Mr. Ramsey had with the manager of the bank, I was not a party to.

Q. You were there after that?

A. We all were sitting in an automobile outside in front of the bank.

Q. Now who is "We", then?

A. Mr. Ramsey, Mr. Elliff and myself. [184] While I didn't pay too much attention to some of the conversation, I started late to listen to it—it involved Mr. Ramsey asking Mr. Elliff or telling Mr. Elliff about Mr. Elliff's possible helping Twin City liquidate the inventory and some other things which I don't remember too well now. But the one

(Testimony of Joe N. Baum.)

thing I do remember is that Mr. Elliff finally said, "Well, whether you know it or not Twin City Lumber Company is now in the lumber business in San Jose and here are the keys."

Q. Then what transpired?

A. Well, Mr. Ramsey told Mr. Elliff words to the effect that Twin City Lumber Company was not interested in selling lumber through the means of or the type of distribution outlet that Mr. Elliff was engaged in.

Q. What further was said, if anything?

A. And I don't remember too much more about the conversation after that. But that one point I do remember rather distinctly about Mr. Elliff stating, "Well, here are the keys, you are now in the lumber business."

Q. Now was there any subsequent discussion in regard to the intentions of Twin City Company respecting the Pine Supply Company?

A. Well, the next discussion I remember very definitely was when we went up to Mr. O'Connor's office to talk to Mr. O'Connor about preparing a \$28,000.00 note.

Q. And before we get to that point may I [185] ask you this question? Did you ever have a conversation at which Mr. Ramsey was present regarding the length of time or regarding the intentions—withdraw length of time—regarding the intentions of Twin City Company and regarding the possibility of a new agreement?

A. I can't state definitely as to whether that the



(Testimony of Joe N. Baum.)

intentions—the conversation about the intentions of the Twin City Lumber Company were mentioned at the meeting that I spoke about that wound up in sitting in the automobile out in front of the bank, or whether it was after that.

But I do know that at one time Mr. Ramsey had made some statement about the possibility if the inventory had to be liquidated, that there might be a chance of using some of the molding patterns in some Eastern shipment that Twin City Lumber Company might have to make.

But I can't definitely state just when I remember hearing that.

Q. Do you remember any discussion regarding the length of time during which the inventory was to be tied up, the stock and trade?

A. Well, the only thing I can say about that, Mr. Jacobs, is when Mr. Ramsey came down—I am pretty sure it was on a Friday afternoon—and informed Mr. Elliff that the warehouse was being closed and that Mr. Elliff should release his employees. [186]

Some remark was made to the effect that it was going to be—stay closed until either some working arrangement, some definite working arrangement could be worked out, or else that the inventory itself was to be liquidated to satisfy the debts of Mr. Elliff to the Twin City Lumber Company.

Q. Now who made that remark?

A. Mr. Ramsey.

Q. And is it your recollection that that was

(Testimony of Joe N. Baum.)

made at the time when Mr. Ramsey did come in and directed that the warehouse be closed?

A. Well, it was either made, as I say, then or very probably during this conversation that took place while we were waiting in the automobile outside of the Bank of America.

Q. I see. The same parties, I think you said, were present on both occasions? A. Yes, sir.

Q. Now all of these conversations that you have talked about were prior to the 6th of October, were they not? A. That is correct.

Q. That is, of 1953. Now on the 6th of October, 1953, did you have a conference with Mr. Elliff, Mr. Ramsey, and Mr. O'Connor?

A. Well, I know that I had—I was present at a meeting in Mr. O'Connor's office. Now as to whether it was on the 6th of October or not, I am not sure. [187]

The Court: Who was there?

The Witness: Mr. O'Connor, Mr. Ramsey, Mr. Elliff and myself.

The Court: And what was discussed at that conference?

The Witness: The first matter that was discussed was the preparation of a note in the sum of \$28,000.00, which Mr. Elliff and his wife were to sign in favor of the Twin City Lumber Company.

The Court: And was another subject discussed at that conference?

The Witness: Well, besides the amount of the note, I remember there was some discussion about

(Testimony of Joe N. Baum.)

the length of time that Mr. Elliff would be allowed to make payment on the note.

Mr. Jacobs: Q. Was there any discussion regarding a trust agreement?

A. I think that the subject of the trust agreement was brought up, but after a few minutes of discussion about it, Mr. O'Connor said that he was not conversant with the chain of events that led up to it and that he suggested that we wait and speak to Mr. Pasquinelli personally.

Q. Now in this discussion regarding the trust, did Mr. Ramsey take part?

A. I would say that he did, Mr. Jacobs, but the discussion was very brief.

Q. Were any of the terms of the trust [188] agreement that was suggested, were they discussed during this brief——

A. I don't think so. I think that the conversation regarding the trust agreement was very general about preparing a trust agreement to secure Mrs. Lannin's guarantee on the note, which Mr. and Mrs. Elliff were going to sign in favor of the Twin City Lumber Company.

Q. Well then, was any subsequent discussion of that subject had in your presence?

A. There was. Either the following day or the day after that, as I say again my memory isn't quite exact, we did have a meeting in Mr. Pasquinelli's office. When I say "we" there was Mr. Elliff, myself, Mr. Ramsey, and Mr. Pasquinelli.

Q. And what was discussed at that meeting?

(Testimony of Joe N. Baum.)

A. The item of discussion was the trust agreement that was to be written up.

Q. And did Mr. Ramsey take part in that discussion? A. He most certainly did.

Q. Now what part did he take in it?

A. Well, one part I remember specifically was that he stated that the Twin City Lumber Company insisted upon some trustee handling the funds of the business as that they were not very much interested in getting into any kind of arrangement where Mr. Elliff would be able to sign the checks.

Q. Did he say anything else in regard to the trust agreement that you recall? [189]

A. Yes. There was a general discussion as to how much or what percentage of the gross receipts of the business. In other words, the proceeds from the sales of the stock in trade was to be withheld by the trustee in order to make the payments as they became due under the terms of the note that I have just spoken about.

Q. Did Mr. Ramsey make any suggestion or make any statement in that regard as to what he wanted?

A. I think at the time that Mr. Ramsey had mentioned a figure of somewhere in the neighborhood of twenty-five per cent or better as the amount that should be withheld from the gross receipts of the business.

But after a general discussion up there the amount that was settled on was twenty per cent because everybody came to the conclusion that the

(Testimony of Joe N. Baum.)

twenty five percent withheld would be too much to expect to take out of the general funds of the business and still allow it to operate.

Q. Now you have read the trust agreement, have you not?        A. Not recently, Mr. Jacobs.

Q. We have it in evidence here.

The Court: Here it is.

Mr. Jacobs: Q. Thank you, sir. I am showing you Exhibit 7 and ask you to look at that briefly and tell me whether that is the document that was under discussion at that Pasquinelli meeting. [190]

The Court: Counsel, how could he say whether it was or not, the document wasn't in existence at that time.

Mr. Jacobs: Q. Of course, you are right, your Honor, an oversight on my part.

Have you looked at that document briefly?

A. I just started to look at it, Mr. Jacobs.

Q. Will you please examine it first and I will ask my next question.

Do you see any provision in that document, the subject matter of which was not discussed at that meeting?        A. Not offhand, Mr. Jacobs.

Q. What?        A. No.

Q. Are we to understand then that all of the terms that you find in that document were discussed at that meeting?

Mr. Shapro: I object to that question, if your Honor please, upon the ground it is leading and suggestive and also it calls for the opinion and con-



(Testimony of Joe N. Baum.)

clusion of the witness, all the terms of the agreement.

The Court: Sustained.

Mr. Jacobs: Q. Let me ask you specifically, Mr. Baum, regarding this provision in the agreement for the payment of obligations of the business, it appears on page 4 and reads,

“That in order to alleviate as much as possible the manual work involved in the administration [191] of this trust, it is agreed that the trustor and/or his accountant shall submit to the trustee the proper invoices and vouchers along with checks drawn by the trustor in payment thereof—the said checks to be drawn upon the trustor’s personal account—and in order to forestall the possibility of attachment or other levy upon the said account, the said checks to be certified—and in turn, the said trustee shall deposit from the trust account into the account of the trustor sufficient monies to honor the said checks, and the trustee shall thereupon mail the checks to the person entitled thereto.”

Was there a discussion at that meeting about the inclusion of such a clause in the trust agreement?

A. There was, Mr. Jacobs, because it was my suggestion that such be done.

Q. And was there any discussion of the occasion for including such a clause in the agreement?

A. There was because at that time there were several creditors of Mr. Elliff’s who were rather

(Testimony of Joe N. Baum.)

insistent in their demands for payment. Particularly there was one, a lumber company up North, and that obligation was one that had been incurred by the partnership and as yet had not been paid.

Q. You mean the Abbott Lane partnership, do you?      A. That is correct.

Q. And was there discussion at that meeting regarding the giving of notice to creditors?

A. There was.

Q. And what was said and by whom at that meeting in that regard?

A. Well, I remember Mr. Pasquinelli stating that in order to fully comply with the California law that a notice should be given to creditors regarding the assignment of interest in the inventory and also the receivables. And after that there was a general discussion—I do not remember which party said what—but it was generally agreed before the meeting came to an end that there would be no such notice given to creditors.

Q. Well, did Mr. Ramsey take part in that discussion?      A. I believe Mr. Ramsey did.

Q. Did he express any dissent to that conclusion that you have mentioned?

A. Well, I can state, Mr. Jacobs, is that at the end of the discussion that everybody was in agreement that no notice would be given to creditors.

Q. You continued to be the auditor of that business until the end of the year, you have said?

A. That is correct. [193]

Q. Was any notice, to your knowledge, ever

(Testimony of Joe N. Baum.)

given to creditors of the discussion of the execution of a note or of the execution of the trust agreement?      A. Not to my knowledge.

Q. I mean notice in any way, manner or form, by letter or by recording or any other manner?

A. Not to my knowledge.

Mr. Jacobs: May I have just a moment to consult this rather voluminous file? It won't take me more than a minute.

The Court: We have been going steadily since 1:30. We will take a recess.

(Recess.)

Mr. Jacobs: I believe I can say, your Honor, that it is stipulated that this group of documents, which includes Plaintiff's 4 for Identification, your Honor, the open account of Twin City Company.

Mr. Shapro: Mr. Jacobs, if there is going to be a stipulation, let's not use the word "open" because I am not going to stipulate to the use of the word "open."

Mr. Jacobs: Let's say it's a page of the accounts receivable ledger, pages A and B of the accounts receivable ledger.

Mr. Shapro: Of what?

Mr. Jacobs: Of an account between Pine Supply Company and Twin City Company. [194]

Mr. Shapro: Of an account, not the account.

Mr. Jacobs: Of an account.

Mr. Shapro: Then I will accept the amendment.

The Court: Gentlemen, don't you think we could move along a little faster? If you are going to put

(Testimony of Joe N. Baum.)

something in by stipulation, let's not be so slow.

Mr. Jacobs: I beg your Honor's pardon. Commencing with the date May 7th, 1953, and ending the final date of April 26th, 1954, that is offered in evidence as the Trustee's Exhibit next in order, that is, the ledger sheet and all of the accompanying vouchers.

The Court: I suggest that as it is presently marked Plaintiff's Exhibit 4 for Identification that we admit it in evidence because the invoice is on the top, the first sheet of that. All right, it may be admitted in evidence.

(Thereupon the foregoing ledger sheet was admitted and marked as Plaintiff's Exhibit No. 4 in Evidence.)

Mr. Jacobs: And it is also stipulated, your Honor, I take it, that this document that I now hold there is a photostatic copy of the account kept by Twin City Company of the deals between itself and Abbott Lane Company and we offer that as Trustee's next in order.

The Court: Exhibit 12 admitted.

(Thereupon the foregoing document was admitted and marked as Plaintiff's Exhibit No. 12.) [195]

Mr. Jacobs: We obtained a transcript from the records of Twin City Company regarding a warehouse account.

Mr. Shapro: Do you have it?

Mr. Jacobs: And Mr. Baum has the sheet.

(Testimony of Joe N. Baum.)

Mr. Shapro: Let me see it. All I have to do is look at it.

Mr. Jacobs: I think he has the original.

Mr. Shapro: He probably has.

The Court: This is a case gentlemen that illustrates the possible advantages of pretrial. Rather than to go into Court, it could have been determined by pretrial or by deposition, as we would save a lot of time.

Mr. Jacobs: That is appreciated, your Honor. I ought to say in behalf of all the counsel here, your Honor, that my own notice of this thing was received upon my return of trying another matter in Fresno. I got notice of it—not through any fault of opposing counsel or the Court or anybody else, but by force of circumstances—I got my first notice of it approximately three days before the date of trial.

So that the time for preparation on the part of the trustee was correspondingly restricted.

I now hold what is stipulated to be an accurate transcript of the account left by Twin City Company which demonstrates its warehouse account, is that correct?

Mr. Shapro: That is correct. [196]

Mr. Jacobs: Covering its dealings with Pine Supply Company. I offer this as the Trustee's Exhibit next in order.

The Court: Exhibit 13 in Evidence.

(Thereupon the foregoing ledger page was



(Testimony of Joe N. Baum.)

introduced and marked as Plaintiff's Exhibit No. 13 in Evidence.)

Q. (By Mr. Jacobs): Mr. Baum, at the time of the October transaction, that is to say, on October 6th, that was at the beginning of it, 1953, do you know what specifically what checks had been issued by Pine Supply Company or by Mr. Elleff to the order of Twin City Company which have not been paid and were still held by that company?

A. My—to the best of my knowledge there were three checks.

Q. And what were they?

A. There was one for \$741.26; one for \$7,310.98; and one for \$2,500.00.

Q. Has any of those checks ever been paid?

A. No.

The Court: I don't understand what you are talking about, counsel. Are you going back to the meeting at the bank?

Mr. Jacobs: No, sir. We are referring now to the time when this transaction, this note and deed of trust transaction occurred.

The Court: It involved \$10,000.00 worth of bad checks? [197]

Mr. Shapro: The witness will identify them, your Honor.

The Court: And it involved this note of \$28,000.00?

Mr. Shapro: Correct.

Q. (By Mr. Jacobs): Now during the time that you served as an auditor for the firm, was any of

(Testimony of Joe N. Baum.)

these checks ever returned to Mr. Elliff?

A. Not to my knowledge.

Q. Now subsequent to the October transaction—withdraw that.

First I want to ask you this question. Did you have any correspondence subsequent to the October 8th conference in Mr. Pasquinelli's office at which Mr. Elliff and Mr. Ramsey were present?

A. I did.

Q. Where did that take place?

A. It took place in a restaurant over near San Rafael, either the Venetia Palms or Richfield Arms. It's a restaurant—hotel—motel and swimming pool a little ways past the Golden Gate bridge.

Q. (By Mr. Shapro): Bermuda Palms?

The Witness: Bermuda Palms.

Q. (By Mr. Jacobs): And who was present?

A. Mr. Ramsey, Mr. Elliff, and myself.

Q. Did you go over to that conference with Mr. Elliff?      A. I did. [198]

Q. Now were any documents taken by yourself and Mr. Elliff to Mr. Ramsey on that occasion?

A. There were.

Q. What were they?

A. If I remember correctly, the trust agreement and the promissory note, and the letter of transmittal.

The Court: A letter of what?

The Witness: Transmittal.

Q. (By Mr. Jacobs): And what was done with those documents?

(Testimony of Joe N. Baum.)

A. They were given to Mr. Ramsey for his examination.

Q. Did he examine them on that occasion?

A. He did.

Q. And does that include the trust agreement?

A. Yes.

Q. Did you see him read it?           A. I did.

Q. And then what happened to those documents?

A. Those documents were to be forwarded to Mr. Hunter down in Los Angeles along with one other document, which Mr. Elliff had not brought over because he did not have it, namely, a financial statement of Mrs. Pearl K. Lannin. The conversation resolved itself into the fact that since Mr. Elliff still had to attain the financial statement from Mrs. Lannin and since I had to go down to Los Angeles on some personal business, that both of us was to take all the documents down [199] there and deliver them to Mr. Hunter since we would get down there and be able to deliver them at least as fast, or possibly faster than the mail would reach him.

Q. Was there any discussion about any communication between Mr. Ramsey and Mr. Hunter in the meantime?

A. The only thing that I remember is that Mr. Ramsey looked over the documents and said they were in order and he would forward them down by mail to Mr. Hunter.

Q. But then it was subsequently decided——

A. It was decided that Mr. Elliff should take

(Testimony of Joe N. Baum.)

them down there and deliver them personally.

Q. Did the two of you do that? A. We did.

Q. When did you do it?

A. We delivered those documents on the following Sunday, if I remember correctly. We went down to Los Angeles and relatively early on a Sunday morning we drove out to Mr. Hunter's house in Beverly Hills. I sat in the car, Mr. Elliff went to the door of the house. The maid answered the door and Mr. Elliff handed an envelope to the maid containing the documents.

Q. Do you know the documents that were in the envelope? A. Yes, I do.

Q. And specifically what were the documents that were delivered to Mr. Hunter? [200]

A. There was at least one copy of the trust agreement, a signed promissory note, and a financial statement of Mrs. Lannin, and some letters of transmittal, which I had not read.

Q. Now, subsequent to that, did you have anything to do with the warehouse receipts that have been mentioned here? A. No.

Q. You had nothing to do with it. And were any purchases made after October of 1953 by Pine Supply Company from Twin City Company?

A. There were.

Q. And when were they made?

A. There was one purchase made on November 20th, 1953, and one purchase made on November 25th, of 1953.

Q. Was anything subsequently bought?

(Testimony of Joe N. Baum.)

A. No. Those were the only two that——

Q. You mean from Twin City?

A. Those were the only two that I have a record of that were purchased from Twin City Lumber Company.

Q. I see. Do you have a record of payments made for these purchases?      A. Yes, I do.

Q. I will ask you to examine before I consult your own records, the records of the Twin City Company. I am referring to Exhibit 4. Do you find a record of payments for those purchases on Exhibit 4? [201]

A. Yes. There are a record of four payments on the Twin City records.

Q. And on what days, according to those records?

A. February 3rd, 1954, \$726.83; March 29th, 1954, \$3,170.37; March 29th, 1954——

The Court: That is the same day?

The Witness: \$446.25; and April 26th, 1954, \$1,200.00.

Q. (By Mr. Jacobs): Do the records of Pine Supply Company show the dates of payments made by Mr. Elliff, if any, on the \$28,000.00 note?

A. Yes, they do.

Mr. Shapro: I don't know that it is necessary to go into that. It can be stipulated that this is the document which you gave me.

Mr. Jacobs: It is stipulated, if your Honor please, the document I am now offering, which is dated October 6, 1953, is Twin City Lumber Com-



(Testimony of Joe N. Baum.)

pany's records of the payments received on the \$28,000.00 promissory note, including the dates and amounts of those payments.

The Court: Are you offering this?

Mr. Jacobs: Yes, sir.

The Court: Exhibit 14 in evidence.

((Thereupon the foregoing Twin City Lumber Company's records of payments received on the \$28,000.00 promissory note was marked Plaintiff's Exhibit No. 14 and received in evidence.) [202]

Mr. Jacobs: I think that is all.

#### Cross Examination

Q. (By Mr. Shapro): Mr. Baum, as I recall your testimony, you participated with Mr. Ramsey in three conferences prior to the execution of the promissory note, the deed of trust—correct me if I am wrong—namely, a meeting at the office of Twin City Lumber Company, San Francisco, in the latter part of August, 1953. A. That's right.

Q. You said that he was in and out, Mr. Ramsey was not in during the entire conference, as I recall your testimony. A. That is correct.

Q. Secondly, next in order of time, chronologically, a meeting about two or three days later in San Jose.

A. No, I didn't say two or three days later, Mr. Shapro. I said that we had a meeting in—I met with Mr. Ramsey in San Jose.

Q. When was it with respect to the San Fran-

(Testimony of Joe N. Baum.)

cisco meeting of the latter part of August?

A. Well, I would say it was some time after that because I remembered distinctly that the meeting that I think you are talking about, the one that we went over—are you talking about the accounts receivable?

Q. No. In between the very brief meeting, the very brief meeting at which the question of the payment of the bill or [203] something else being done was discussed. Perhaps I am confused as to the time. Did that follow the meeting at which the books were opened up? A. I'd—

Q. It is not my purpose to confuse you nor certainly not the Court. What I am trying to ascertain is: Before you met with Mr. Ramsey and Mr. Elliff in the Pine Supply office in San Jose in the latter part of September when the books were, as you testified, examined or reviewed by Mr. Ramsey, you had how many previous discussions with Mr. Ramsey at which, to use Mr. Jacobs' words, the financial condition of Mr. Elliff was discussed?

A. I think that I testified that the one—at least the one meeting that I was, as I said, I imagine it was in the latter part of August. That was the one up in the Twin City Lumber Company's office in San Francisco.

The other meeting I think I testified to, where we were sitting out in front of the bank, occurred after the time that we sat down and reviewed the books.

Q. I realize that, sir. But wasn't there another

(Testimony of Joe N. Baum.)

short meeting in the office of Twin City Lumber Company; it was just the three of you, you, Elliff and Ramsey were together?

A. I don't remember stating that, Mr. Shapro.

Q. Regardless of whether you said it or not, was there such a meeting? [204]

A. It might possibly have been that I saw Mr. Ramsey at times other than the three times that I stated. But the only times that I remember any definite items of conversation were the ones that I testified to.

Q. Now, tell me, sir, at the meeting at the latter part of September, the only persons present were you, Mr. Elliff, and Mr. Ramsey, at Mr. Elliff's office? A. That is correct.

Q. Now, you testified that you made available to Mr. Ramsey the books and records of Pine Supply Company? A. That we did.

Q. Now, were the accounts receivable displayed to him? A. They most certainly were.

Q. Were the accounts payable displayed to him?

A. I remember that we took out the unpaid bills and made them available for Mr. Ramsey.

Q. Was the total of those bills given to him?

A. As far as I remember, Mr. Shapro, a tape was made, an adding machine tape was made of the unpaid items.

Q. Do you have any record of those?

A. No, because all those records were taken by Mr. Ramsey.

Q. Did you ever give Mr. Ramsey or show Mr.

(Testimony of Joe N. Baum.)

Ramsey at any time a balance sheet of the affairs of Pine Supply Company?

A. No, I do not think I did, Mr. Shapro.

Q. Now, referring your attention to the meeting in the [205] Twin City office in San Francisco in the latter part of August of 1953, were any figures as to assets or liabilities presented?

A. No, there were not.

The Court: What are you looking for?

Mr. Shapro: I am looking for the balance sheet, December 31st, 1953, balance sheet. Here it is. It is Exhibit No. 11.

Q. To your knowledge, Mr. Baum, was a copy of what is now denominated as Plaintiff's Exhibit No. 11 ever given to any representative of Twin City Lumber Company?

A. Not to my knowledge, sir.

The Court: That balance sheet is December 31st, 1953, isn't it?

Mr. Jacobs: That is after the October transaction.

Q. (By Mr. Shapro): After the October transaction. And your testimony is, as far as you can recall, to your knowledge no balance sheet as of any time was ever given to any representative of Twin City Lumber Company?

A. Not to my knowledge.

Q. Now, you mentioned the assets and liabilities of the Abbott-Lane business as of the time of its liquidation, and we have as an exhibit a copy of the partnership return here, do we not?

(Testimony of Joe N. Baum.)

A. Yes, sir. That was the Federal partnership.  
The Court: I don't think I have it.

Mr. Shapro: I am sorry, your Honor.

The Court: Oh, here it is.

Mr. Shapro: It is an income tax return.

Q. Now, Mr. Baum, as you testified and as appears on Exhibit 9, as of the time of dissolution which you state on this return was May 20th, 1953, the partnership of Hodes and Elliff previously called Abbott-Lane, but as of the time of dissolution called Pine Supply Company, had a capital deficit of \$2,208.18.

Now, as I understood your testimony, Mr. Elliff paid to Mr. Hodes something in excess of \$5,000.00 for Hodes' interest in the partnership, isn't that correct?

A. That is correct.

Q. Now, just how much did Mr. Elliff pay Mr. Hodes and when?

A. Upon the dissolution of the partnership a note, or a note on which a balance was still due to Mr. Elliff in the amount of \$1,500.00 was cancelled. That was part of the consideration.

And then Mr. Elliff signed a note in favor of Mr. Hodes calling for regular monthly payments. I can give you the amount of the note if you want.

Q. Would you please? A. Yes. [207]

Q. And you mentioned this morning while you are at it, the terms—or referred to the terms of the dissolution agreement and the amount to be paid. Do you have a copy of that dissolution agreement?



(Testimony of Joe N. Baum.)

A. No, I do not.

Mr. Jacobs: I can give you that, Mr. Shapro.

Mr. Shapro: All right.

The Witness: The note was in the amount of 33—the balance on May 20th was \$3,385.00.

Q. (By Mr. Shapro): \$3,385.00, plus the \$1,500 note that was cancelled, represented thirty-three fifteen, namely, the note which Mr. Elliff paid to Mr. Hodes for Mr. Hodes' interest in the Abbott-Lane partnership? A. It's \$4,800.00.

Q. Oh, I beg your pardon.

A. And then was some additional consideration in that the partnership was set up on such a basis that the partnership of Hodes and Elliff was selling on open account to a business solely owned by Mr. Hodes, and at the same time purchasing items also on open account, and the balance due by Hodes, as an individual, to the partnership, was considerably more than the balance of the partnership owing to Mr. Hodes as an individual.

Q. Was that cancelled?

A. Yes, and that was also cancelled at the time.

Q. How much was that?

A. To the best of my knowledge, it was several hundred dollars.

Q. In other words, in addition to the \$4,600.00, there was an additional consideration of several hundred?

A. Additional consideration, yes, sir.

Q. And that makes the total of something in excess of \$5,000.00 that you mentioned before?

(Testimony of Joe N. Baum.)

A. That is correct.

Mr. Shapro: Did you find that agreement, Mr. Jacobs?

Mr. Jacobs: Not yet.

Q. (By Mr. Shapro): In order to expedite it, do you recall the provisions of the agreement with respect to the measure of this purchase price?

A. I do. The measure of the purchase price called for the—you know, the wiping out of the current account or transfer accounts back and forth; the cancellation of the \$1,500.00 due by Mr. Hodes to Mr. Elliff; and the execution of this thirty-three hundred eighty-five dollar note.

Q. I understood from your testimony this morning that the amount, the exact amount that would ultimately be paid to Mr. Elliff by Mr. Hodes as a result of this dissolution was dependent upon a view of those offers.

A. It was in the partnership dissolution agreement.

Q. Oh, by an act—— [209]

A. There was a stipulation in there that the final amount was to be determined and any adjustment made when an audit was made.

Q. Then I still want to know, if you recall it, in the absence of having the agreement, I want to know if you can tell me the basis upon which the purchase price was to be affected by the adjustments, disclosed by an audit?

A. Well, the dissolution agreement was—and the figures contained therein were stated from the facts

(Testimony of Joe N. Baum.)

that I have given you on the mutual agreement that both parties believed that this was the correct price; but if an audit revealed at a later time to the parties that the figures they stated were incorrect, then an adjustment was to be made.

Q. Either up or down?

A. Up or down, yes, sir.

Q. And as I understood your testimony this morning, the difference was finally adjusted with a matter of a few hundred dollars?

A. This was not because of adhering strictly to the terms of the agreement. What had happened was, a few days later, Mr. Elliff——

Q. Later than what, sir?

A. Later than the execution of the original dissolution agreement. Mr. Elliff had, without counsel, gone up to the office of the attorney for Mr. Hodes and signed some agreement [210] stating in effect that an audit had been made and the figures as stated in the partnership dissolution agreement were correct. Mr. Elliff had forgotten about it by the time that I started to audit the affairs of the partnership. It was upon my advice, stating that he had overpaid Mr. Hodes considerably for the theoretical equity that he had purchased from Mr. Hodes, that payments were—he had then gone to Mr. Pasquinelli and Mr. Pasquinelli wrote a letter. I don't remember either Mr. Hodes or his attorney stating that no further payments would be made until an audit was completed.

We had one conference up in Mr. Pasquinelli's

(Testimony of Joe N. Baum.)

office that was fruitless. And then upon a second conference, Mr. Hodes' attorney flashed this document with Mr. Elliff's signature on it. There wasn't much more one could do about it, except, as I say, settle up.

I think the final consideration amount to some \$300.00 less than called for in the partnership dissolution agreement.

Q. In other words, to sum it up, from what you have testified to this morning and this afternoon on this particular subject, Mr. Baum, for a deficit capital account of \$2,208.00 Mr. Elliff actually paid over \$5,000.00 to Mr. Hodes?

A. That is correct.

Q. Now, Mr. Baum, you testified this morning that as of the meeting the latter part of September in the office of the Pine Supply Company at which the books were looked into by [211] Mr. Ramsey, there was approximately \$25,000.00 in inventory, approximately \$25,000.00 in accounts receivable, and there was about \$2,000.00 in equities in the equipment—or you gave the Court the exact figures—and there was about \$50,000.00 indebtedness, is that right?

A. That is substantially right, sir.

Q. Now, I show you, Mr. Baum, Plaintiff's Exhibit No. 11, which represents a period three months later, right?

A. That's right.

Q. And it shows total assets of \$43,907.00, that is inclusive of accounts receivable, which before reserve for bad debts was \$12,000.00. In other words,

(Testimony of Joe N. Baum.)

the accounts receivable had apparently halved in that period, is that right?      A. Yes.

Q. And the inventories were about the same on your estimate of \$25,000.00, and the fixed assets figure, the gross asset figure is \$6,700.00 minus contracts, finally leaving an equity of about \$2,200.00.

So they were about the same, I mean, as we testified this morning. Now at that time, that is, of December 31st, according to Exhibit 11, the total liabilities of Elliff, dba Pine Supply Company, were \$61,000.00.

In other words, the assets had reduced by approximately \$9,000.00 and the liabilities had increased approximately \$11,000.00, is that right? [212]

A. That is correct.

Q. And yet referring your attention to Plaintiff's Exhibit No. 10, for the whole year, that is, from the beginning of the Pine Supply business, the operation of Mr. Elliff showed an operating loss as per Exhibit No. 10 of only \$7,603.00. Could you explain that?

A. Part of it can be explained, Mr. Shapro, to the effect that any drawings that Mr. Elliff made personally from the business were not coming out against the profits.

Q. Tell me, Mr. Baum, how much Mr. Elliff withdrew after September 30th from this business and before December 31st?

A. It probably, since——

Q. After the latter part of September when you had this meeting, down to the end of the year,



(Testimony of Joe N. Baum.)

within the last three months, we'll say.

A. Oh, he might have withdrawn twelve or thirteen hundred dollars, something like that. Here, you can add this. There is \$4,900.00 here plus 80—well, that is roughly \$810.00, so it's \$4,000.00 — \$1,900.00 to the end of the year. In other words, take the \$4,900.00, subtract from it roughly \$810.00. He drew out to that total.

Q. Do you shown an increase—are you able to tell from the books how much his indebtedness increased from the end of September to the end of December of '53?

A. Well, the only thing I can say right off bat, [213] Mr. Shapro, is that the accounts payable increased where some of the notes and fixed obligations decreased.

Q. In other words, the obligation to Twin City Lumber Company, which, as of October 1st, let's say, was \$28,000.00, approximately had been reduced by December 31st to \$25,500.00?

A. That is correct.

Q. And the obligation of Mrs. Lannin about which you testified, \$7,000.00, was still owing?

A. That's right.

Q. But there is still a drop of approximately \$9,000.00 in assets and an increase of liabilities of approximately \$11,000.00.

A. Wait a minute, wait a minute. Another point that might be, Mr. Shapro, is on this inventory valuation, and if I remember correctly, instructions were given to Mr. Elliff at the time the inventory

(Testimony of Joe N. Baum.)

was to be taken, to take the inventory, physical inventory, on the basis of cost or market, whichever was lower. Now, it is very possible there that the inventory figure might, on a book value basis, be higher.

But as far as for tax purposes, the inventory, because of items that didn't move or might have been damaged or spoiled or something like that, were written down to a more realizable value.

Q. The inventory figures on Exhibit 11, the December 31st balance sheet, had still taken the book value at cost? [214]

A. I said cost or market.

Q. Which way; you tell me which it was then.

A. I didn't take the inventory, Mr. Shapro.

Q. Show me from the books whether it was taken at inventory or cost.

A. The inventory, you couldn't ask me that, because I was not present at that time. All I was given was an inventory figure.

Q. Was there a continuing inventory in the general ledger?

A. No. There was not a perpetual inventory kept in the general ledger. Those records were kept by the manager of the field warehouse.

Q. Now, tell me, Mr. Baum, when this inventory was taken in the form that you have described by reviewing the warehouse records between you and Mr. Ramsay and Mr. Elliff, which again was in this meeting at the latter part of September of 1953—do you recall that?

(Testimony of Joe N. Baum.)

A. I recall going over.

Q. You testified this morning that the inventory figures were based upon the warehouse receipt data which the warehouse man gave you and which you did not have, were not able to retain, right?

A. I had no control over it at all.

Q. Isn't it a fact, Mr. Baum, that at that time—and I [215] am referring now to the end of September, 1953—there was considerable inventory not in the field warehouse?

A. As far as I remember, Mr. Shapro, that is not the case.

Q. Well, now, you testified, Mr. Baum, this morning, that as of that time, part of the stock in trade which you described was plywood, do you recall that?      A. That's right.

Q. Was there any plywood in the field warehouse at the time of this meeting, at the time this inventory was taken?

A. I am pretty sure there was some plywood on the floor of the warehouse building.

Q. Now, in the field warehouse—you know what I mean?

A. That's right. Anything in the field warehouse was supposed to be subject to the terms of this warehouse agreement.

Q. Mr. Baum, will you try to answer my question. My question was: To your knowledge, was there any plywood in the field warehouse at the time this inventory was taken at the end of September?

(Testimony of Joe N. Baum.)

A. I said to my knowledge, Mr. Shapro, there was.

The Court: What do you mean: to your knowledge?

Q. (By Mr. Shapro): Did you see warehouse receipts, sir, covering any plywood at that time?

A. I think I did.

Q. That is your best recollection? [216]

A. That is my best recollection.

Mr. Shapro: In due course, the warehouse receipts will be produced, your Honor.

Q. Mr. Baum, will you tell us what books Mr. Ramsay examined at this meeting in the Pine Supply office at the end of September?

A. The only books of account that were kept, Mr. Shapro, was——

Q. I didn't ask you what was kept. Please just tell me what you examined.

A. There was this book and there was a book like this keeping accounts receivable, and a file of accounts payable, which were listed on sheets like this here (indicating).

Q. This book that you referred to is a green canvas covered book?

A. That is right. At the time, though, it was in this binder.

Q. But the sheets that are now contained in the green canvas were in another binder at the time?

A. That's right.

Q. Will you show me, please, in this book the one you have identified, namely, the green canvas

(Testimony of Joe N. Baum.)

covered, the sheet which indicates the indebtedness to Mrs. Lannin of \$7,000.00?

Mr. Jacobs: That is assuming a fact not in evidence, your Honor. It hasn't appeared so far that the \$7,000.00 was shown by that book. [217]

The Court: He has asked him to show it to him.

Mr. Shapro: The witness shows me a ledger sheet headed "Pearl K. Lannin," with a date, December 31st, 1953, a journal entry 15, of \$7,000.00.

Q. Now, Mr. Baum, are you going to tell me, please—will you tell the Court that that sheet was in that book in October of '53?

A. No, Mr. Shapro, I never said that that sheet was in the book. This sheet was in the book, the entries on the back side of the sheet weren't.

Q. Then I asked you, sir, just a moment ago, to show me where in the book that was shown to Mr. Ramsay that I had identified as this green sheet was shown the indebtedness to Mrs. Lannin of \$7,000.00.

Mr. Jacobs: To which I objected at the time that it had not so far appeared in evidence that the \$7,000.00 was shown by that book.

Q. (By Mr. Shapro): I will ask another question if I may, your Honor.

Mr. Baum, did the book which is now bound in green canvas and which was shown to Mr. Ramsay in the meeting of September, 1953, contain a ledger sheet or an entry indicating an indebtedness to Mrs. Lannin of \$7,000.00 at that time?

A. No, it did not.



(Testimony of Joe N. Baum.)

Mr. Shapro: I would like to have this book marked [218] for identification, your Honor, because we have referred to it.

The Court: All right. It may be marked Defendants' Exhibit C for identification.

(Whereupon the book described was marked Defendants' Exhibit C for identification.)

The Court: What do you call it, a ledger sheet?

The Witness: This is a combined ledger and journal, sir.

Mr. Shapro, I think you should make some arrangements with Mr. Jacobs, because I took these books of account from the trustee when I came up here.

Mr. Shapro: I am satisfied that whatever arrangements are necessary will be made between Mr. Jacobs and myself and with the Court's approval.

I don't think there will be any difficulty in view of the fact, your Honor, that these books are in frequent use because there are a large number of actions pending or in preparation on behalf of the trustee against various debtors, namely, we do need the books of the bankrupt, the records as compiled by this accountant.

Q. Now, Mr. Baum, will you show me what records of any sort were shown to and inspected by Mr. Ramsay in this meeting in September, 1953, indicating the indebtedness of Mr. Elliff dba Pine Supply?

(Witness hands a group of ledger sheets to Mr. Shapro.) [219]

(Testimony of Joe N. Baum.)

Q. (By Mr. Shapro): You have handed me a group of ledger sheets, accounts payable ledger sheets, ledger sheets which have on the cover page the words: "Accounts Payable 1953."

Incidentally, in whose handwriting do those words appear?

A. Mrs. Barnhart. The other records that were given to Mr. Ramsay as far as I——

Q. Wait a minute. Please, let's stick to the question I asked you. This is what was shown?

A. As far as I remember, it was.

Q. Now, Mr. Baum, I just at random picked up one item, one of the ledger sheets which runs in favor of Durable Plywood Sales. I find entries on that sheet commencing with October 31st, 1953.

A. That is very possible, Mr. Shapro. This is the accounts payable ledger for 1953. Now, when I say that is what he examined, he could only examine the sheets of the record of the transactions up to the time he looked at them.

Q. I asked you, and I repeat now, sir, I want you to show me the records of Mr. Elliff that were shown to Mr. Ramsay that he examined at the meeting in September of 1953.

A. Very well, Mr. Shapro. Some of those records I cannot produce to the court because they are in either my office or the trustee's office in files. There are several batches of invoices, both billing to Mr. Elliff's customers; there are [220] several folders of invoices where people have billed Mr. Elliff. When I offered this, it was the accounts payable ledger and in there there were sheets that

(Testimony of Joe N. Baum.)

he could have looked at, had he wanted to, because they were entries prior to the time that he came down.

Mr. Shapro: Your Honor, in view of what I know to be a sharp conflict in evidence, that will have to be resolved in connection with this meeting of September of 1953, I feel that we are entitled to have this witness, and also Mr. Elliff, on cross examination, identify and pinpoint the particular records which they say were examined by Mr. Ramsay. And if necessary, your Honor, and it is, in my humble judgment, so important to the case of the defendants whom we represent, that the records, if they are not here and they are in the trustee's possession, should be brought here, because I am quite serious in undertaking to cross-examine both this witness and Mr. Elliff in connection with that subject before, of course, your Honor hears the defendants' case. I think it is a reasonable request, and I am perfectly willing to proceed with cross-examination on other lines. But I do want to reserve the right and ask your Honor to instruct the trustee, the plaintiff, and the accountant, to produce tomorrow all of the records which either the trustee or the witness has in their possession, or under their control, which the witness will identify as having been shown to Mr. Ramsay in 1953 at [221] the September meeting.

Mr. Jacobs: Well, he is asking for a great volume of records. What is the bulk of them, Mr. Baum?

The Witness: Well, Mr. Jacobs, I cannot go

(Testimony of Joe N. Baum.)

through every piece of paper there and state whether Mr. Ramsay examined it or not because no identifying——

The Court: That isn't what you are asked to do, Mr. Baum. That isn't the question. The question is to give us the ones that were shown to Mr. Ramsay; whether he examined them or not is another matter.

Mr. Jacobs: The ones that were presented to him, counsel, I think counsel must mean the ones that were presented—that were made available to Mr. Ramsay for his examination. Am I not stating it correctly?

Mr. Shapro: That is correct.

The Witness: Well, then, every scrap of paper that was in the office at the time that Mr. Ramsay walked into the office was made available to him for his examination.

Mr. Shapro: Your Honor, let's be reasonable about this. My question only refers to the documents and the records that were shown to him in connection with liabilities, not every scrap of paper.

Mr. Jacobs: Well, when could you do it, within what period of time could you get them together?

The Witness: Well, most of them, I think, are in that [222] filing cabinet that was moved over to my office from the trustee's office. Now, I would have to sit down, Mr. Jacobs, and actually pull out, first separate all those invoices, etcetera, and find out which ones were dated, so they probably would have been received prior to September 30th

(Testimony of Joe N. Baum.)

or thereabouts, before I even attempted to bring it into court.

Otherwise, there is probably a couple of drawer-fulls of records there.

Mr. Jacobs: Your Honor can see what we are confronted with by counsel's demand. I sympathize with it and wish that some way could be found to satisfy his requirements without the delay that it is going to entail. It is perfectly clear the witness can't do this in a moment.

How long will it take, can you estimate?

The Witness: It will take at least the better part of a day or more.

Mr. Shapro: Your Honor, I am sincere in urging it. It is not an ideal request, neither do I want to put the Court or the witness to any undue inconvenience. It is in my humble judgement a very serious point in this case. I want to explore it in the interests of our clients to the fullest extent.

I think in view of the testimony we have already had, I am certain I am entitled to it.

Mr. Jacobs: Well, it's beyond my humble wisdom, your [223] Honor, what ought to be done in a situation like that.

The Court: Counsel, on direct examination this witness has said, "We gave to Mr. Ramsay all the records." Then on cross examination they say, "What records?" It is just as simple as that. They are entitled to them under that basis.

Mr. Jacobs: But must we segregate records



(Testimony of Joe N. Baum.)

relating to liabilities and records relating to assets on the basis of that direct examination?

Mr. Shapro: Not if you want to—I will withdraw my offer. I thought it would simplify matters, to liabilities. To the liabilities; if you want to produce them all on both sides——

Mr. Jacobs: I have no objection. That would be far simpler. It would diminish the bulk. But it is still tremendous.

Mr. Shapro: If I may say, your Honor, those records have been gone over both by the trustee, Mr. Jacobs and by myself. There is a great mass of those records and there is no context or order or anything else. I will produce all the records that I have in my possession that belong to Pine Supply Company.

Mr. Jacobs: And that you had at that time?

Mr. Shapro: No, no.

The Witness: The only thing I can produce, Mr. Jacobs, [224] is what I have in my possession right now. I can put that whole filing cabinet on a truck and send it up here.

Mr. Shapro: Again may I suggest that we are trying to be reasonable. If you were at this meeting, Mr. Baum——

The Witness: That is correct.

Q. (By Mr. Shapro): You were the accountant for Mr. Elliff? A. I was.

Q. You have testified and so has Mr. Elliff that certain records were displayed to Mr. Ramsay at that time? A. They were.

(Testimony of Joe N. Baum.)

Mr. Shapro: I know of nobody better than the witness and his client to pick up the records that they say—I am entitled to have them and that is exactly what I want.

Mr. Jacobs: I beg your pardon?

The Court: I understand the testimony of both the witnesses referred to and was to the effect that all of the records that they had were made available to Mr. Ramsay. That was my understanding of the testimony, and I think the record will bear me out. They can produce all the records that this witness can now get a hold of and the trustee can get a hold of——

Mr. Shapro: Your Honor, may I interrupt a minute?

I am only asking—I have only asked for those records concerning liabilities which this witness said was made available in that meeting to Mr. Ramsay. That is all I ask for. [225]

Now, if he wants to bring them all, I have no objection, but my request is limited to the question of liabilities.

The Witness: Your Honor, if I can state something, when Mr. Ramsay came down here, we told him, both Mr. Elliff and I did, that all the records were available for his inspection. We mentioned—I remember stating that in the filing cabinet was the accounts payable and the unpaid bills. Now, I do not remember specifically which of the bills Mr. Ramsay examined and which——

Mr. Shapro: That isn't the question. His Honor

(Testimony of Joe N. Baum.)

cautioned you on that before, that nobody asked you to identify the items which Mr. Ramsay examined, because that would involve a conclusion by you, namely, as to whether he examined them or not.

The point is: What records of liabilities were there?

Now, you testified a few moments ago that a pile of invoices were shown to him and that there was an adding machine tape, but you didn't have the adding machine tape. I want to see the invoices, and if the adding machine tape is available, then I want to see that. If it is not, then of course I can't have it.

The Witness: Well, Mr. Shapro, the reason that I cannot—I cannot give you the adding machine tape is, I said I do not have it. Now, which invoices at the time were included in that stack of unpaid bills that were taped, I [226] would have to go back—to the best of my knowledge try to pick out which ones indicated “not to be paid.”

Now, it is very possible that I might not include some that possibly were included in the tape. On the same hand, I might very definitely include some that weren't included on the tape.

Q. (By Mr. Shapro): Mr. Baum, nobody imputes infallibility to you or anybody else. All I am asking you is that you do that to the best of your ability.

Mr. Jacobs: How many boxes are filled with the records?

(Testimony of Joe N. Baum.)

The Witness: I have one or two cardboard boxes and two or three file drawers full of all this miscellaneous data of Pine Supply Company.

Your Honor, I would have to go through there and try to find just those invoices that were dated prior to September 30th or thereabouts of 1953. They are not in alphabetical order or date order.

The Court: Gentlemen, I can end this very quickly. I think counsel has made a reasonable request. Now, if it is going to take time to get it, I can continue this mattter for one week, two weeks, three weeks, and you can dig them up in the meantime. I don't want any more discussion about it.

Mr. Jacobs: We will cooperate to the very utmost of our ability, I promise that, in all sincerity. How long it will take us to get this material, frankly I wouldn't estimate [227] anything less than a full day and it might take two. I would suggest this: It could be done over the weekend.

Mr. Shapro: It's all right with me. We could proceed then if the Court could find us the time.

The Court: Then the direction is that the accounts payable that were made available for examination by Mr. Ramsay in the September meeting will be produced by the plaintiff, is that right, and the time of that, which we will——

Mr. Shapro: We will leave open, at least until we get through.

The Court: Until we get to the adjournment time, we will leave it open.

Mr. Jacobs: I hope your Honor will indulge us

(Testimony of Joe N. Baum.)

to this extent. Of course, the trustee and myself have no personal knowledge whatever about this. We will get together all of the records in our possession that appear to meet the specifications of counsel.

The Court: All right. Let's go ahead.

Mr. Shapro: May we have marked for identification, your Honor, the group of ledger sheets that have the heading or title, "Accounts Payable in '53."

The Court: It may be marked Exhibit D for identification.

(Whereupon the group of ledger sheets entitled "Accounts Payable in '53" was marked for identification as Defendants' Exhibit D.)

Q. (By Mr. Shapro): On that subject, Mr. Baum, Exhibit D, which [228] the clerk is now marking, were those ledger sheets or any of them available and shown to Mr. Ramsay at the December meeting?

A. I know they were available, Mr. Shapro, and I know that Mr. Ramsay was informed that he could look at any records in the office. Now, as to whether he examined all of the sheets that were in the accounts payable ledger at that time, whether he examined some of them or not, I could not state.

Mr. Shapro: Your Honor, may I have the question read? I don't think——

The Court: Read the question.

(Question read.)

Q. (By Mr. Shapro): Available and shown.



(Testimony of Joe N. Baum.)

A. If I remember correctly, Mr. Shapro, they were available. And I think the accounts, if I remember correctly, the accounts payable ledger was shown to Mr. Ramsay as such.

Q. And you call that group of documents marked Defendants' Exhibit D for identification the accounts payable ledger?

A. Yes, because they were in an individual binder at the time.

Q. I merely am asking you to identify them.

A. Yes, sir.

Q. If, as you say, the Exhibit D was not only available but given to Mr. Ramsay for his inspection, the accounts payable ledger, what was the occasion for this voluminous list and group of invoices?

A. It might very well be, Mr. Shapro——

Q. Please, I don't want any "it might very well be." Will you answer the question? If you know, say so; if you don't, say so.

A. Yes. At the end of September, the books of account had not been closed for September and the purchases entered in the accounts payable ledger and the payments made during the month of September entered against the various accounts.

Q. And would you say that with the exception of the debt and credit entries in the accounts payable entries for the month of September up to the date that you mentioned—we don't know what that date was—but towards the latter part of September—with the exception of the September entries,

(Testimony of Joe N. Baum.)

debts and credits, that the accounts payable ledger was correct at that time?

A. I would say so, Mr. Shapro.

Q. Then why was it necessary to show more than the September invoices to Mr. Ramsay as payables?

A. So that Mr. Ramsay could verify himself as to the extent of some of these accounts that he wanted to.

Q. Let me get that straight; maybe I misunderstand you.

The accounts payable ledger, which is now marked Defendants' Exhibit D was available and shown to Mr. Ramsay at that meeting and with the exception of the purchases and payments, the debts and credits in the accounts payable ledger [230] for the month of September up to the date of the meeting, they were correct. But in addition to this, you showed him drawers full of invoices, as I understood you?

A. Now, Mr. Shapro, I didn't say that there were drawers full. Mr. Ramsay was shown the unpaid bills.

Q. Was he shown unpaid bills which had already been entered into the accounts payable ledger? A. Yes, he had.

Q. He was shown all that? A. Yes.

Q. I see. Now, from your recollection, did he examine, and by examine, I mean actually read any invoices other than for the month of September?

(Testimony of Joe N. Baum.)

A. I think to my best recollection he did, Mr. Shapro.

Q. Now, what did this adding machine tape cover that you have testified to?

A. I think a tape was made of all the unpaid bills on hand, as of the date of this meeting.

Q. Whether or not they were entered into the accounts payable ledger? A. That's correct.

Q. And who made up this adding machine tape, who ran it off on the machine?

A. Frankly, I don't remember whether it was Mr. Ramsay or myself. [231]

Q. Now, you say you didn't take it away with you. Do you know what happened to this adding machine tape? A. No, sir, I do not.

Q. Did anybody request you to make available to Mr. Ramsay the invoices of payables which had already been entered in Defendants' Exhibit D?

A. No.

Q. Are you familiar with Mr. Hodes' signature? You called it Hodes and somebody else calls——

A. I think it is Hodes.

Q. Are you familiar with his signature?

A. No, I am not, Mr. Shapro.

Mr. Jacobs: I have seen his signature repeatedly; if I can assist you, I will. I think I have some of the documents if you can give me time to——

Mr. Shapro: There is no hurry about it, there is no hurry.

Q. Getting back again, Mr. Baum, to this meeting at the end of September of 1953, what, if any,

(Testimony of Joe N. Baum.)

information did you give to Mr. Ramsay concerning liabilities of Mr. Elliff, other than those involving Pine Supply?      A. None.

Q. What, if any, information did you give at that meeting to Mr. Ramsay concerning assets of Mr. Elliff other than those of Pine Supply? [232]

A. None.

Q. Now, as I remember your testimony of this morning, Mr. Baum, the July, August and September sales were each in excess of \$13,000.00, right?

A. If I could have that book, Mr. Shapro, to refresh my memory?

Q. You are asking for Defendants' C for identification?      A. July, August and September?

Q. Yes, sir; that is, of '53.

A. Well, July's were just around \$13,000.00; August's were roughly \$17,500.00.

Q. September, about?

A. And September roughly around \$13,200.00.

Q. Now, during those three months or during each of those three months, did Mr. Elliff make a profit?

A. As I testified before, Mr. Shapro, I think I stated that he made some profit in July, a little bit better than \$1,000.00 in August. And as I say now, we never took an actual profit statement. As I have said before, what we did was take the sales and apply the expenses as they were incurred or paid.

Q. Isn't it a fact, Mr. Baum, from your experience with Mr. Elliff's business as his accountant that

(Testimony of Joe N. Baum.)

if sales would average \$13,000.00 a month or better throughout the year, that he could have made a profit?

A. I would have to qualify my answer, Mr. Shapro. [233]

Q. You are at liberty to do it, sir.

A. I would have to qualify it. It would depend to a large extent on how much of the work Mr. Elliff did himself and how much he had other people do for him.

Q. Let's in fairness to both sides just answer the question if you will. Having in mind the way he was operating in July, August and September of 1953.

A. Well, I think that if his sales were consistently better than \$16,000.00 or better, with a fair markup, he could probably have made a small profit during the year.

Q. Now, you testified that to the best of your ability that his markup, his average markup, was 20 to 25 per cent? A. About that.

Q. Isn't it a fact, Mr. Baum, that the 20 per cent that was put in the trust agreement was predicated upon average sales of \$10,000.00 a month and that \$2,000.00, therefore, would meet the first payment, which was due February 1st, 1954?

Mr. Jacobs: Just a moment. Your Honor, he is asking for his opinion and conclusion as to what the provisions are predicated upon. No proper foundation has been laid for it.

The Court: This is cross examination. If the



(Testimony of Joe N. Baum.)

witness said he was present at the conference and all the terms of this agreement were discussed—this is cross examination—I think he is entitled to ask it. If it isn't true, he can say no. Will you read the question? [234]

(Question read.)

A. Well, I knew there was a payment due in the beginning of February.

Q. (By Mr. Shapro): If it will help you to answer the question, take a look at Defendants' Exhibit B, which is the note in question. Would you like to look at the trust agreement?

A. I remember the 20 per cent on the trust agreement. Well, quite to the contrary, Mr. Shapro, I am not exactly sure as to what the monthly sales were estimated, or we presumed they were going to be. But part of the monies on this 20 per cent that was coming out, we estimated would come out of the collections on the accounts receivable. That is how we got up to a figure of \$10,000.00, based on—for the first payment.

Q. Well, your sales record, that is included in your profit and loss statement for the period of the operation in 1953, shows gross sales for a period of six months of about \$73,000.00, right?

A. It's about, close to seven and a half months, Mr. Shapro.

Q. I am looking now at Exhibit 10.

A. It's around May 20th, at the end of the year that June——

Q. Six months, plus ten days, seven months.

(Testimony of Joe N. Baum.)

A. Seven months, it's——

Q. It's about \$73,000.00?      A. That is correct.

Q. So there was an average of about \$10,000.00 a month?      A. That's right.

Q. Can you tell the Court, Mr. Baum, as long as you have testified that Mr. Ramsay suggested first something higher than 20 per cent and it was finally agreed 20 per cent, on what basis the 20 per cent figure was arrived at by the parties to this conference?

A. Well, one of the reasons was, Mr. Shapro, that that was the lowest figure that we could get Mr. Ramsay to agree on and go along with the other arrangements that ultimately allowed the inventory to be released, and Mr. Elliff continue in business.

Q. That was one reason. Any others?

A. Yes, there were. The only reason that this business could finally, if it ever had a chance to work——

Q. This is a discussion that we are talking about?

A. That is right, Mr. Shapro. The only way that the business could bail itself out of the situation that it was in, which was that it was shut up, was to re-open. And if those were the best terms that could be gotten under the arrangements, those were the ones that would have to go on.

Q. Mr. Baum, is it your testimony that the question of how much in sales Mr. Elliff would expect to do during the period that this note was to

(Testimony of Joe N. Baum.)

be paid was not discussed between the three of you?

A. It was discussed, Mr. Shapro.

Q. Then what were the figures that were discussed?

A. Well, frankly I don't remember specifically. But I am pretty sure that they were in excess of \$10,000.00 a month.

Q. In excess of \$10,000.00? A. Yes, sir.

Q. Now, Mr. Baum, you are familiar—you were familiar at the time and I assume still are familiar, with the method of the Twin City Lumber Company crediting 70 per cent of the invoice price of lumber that went into the warehouse after the May warehouse agreement? By being familiar with it, I mean you know that only 70 per cent was carried in the warehouse account?

A. I know now, yes, Mr. Shapro.

Q. When you took the inventory from the warehouse receipts in this meeting of September of 1953, on what basis, dollars and cents wise, was it taken?

A. I think—as I say, I am trading on memory now, Mr. Shapro, because this happened two years ago. But if I remember the records that the warehousemen kept were stated in the terms of physical count. In other words, so many pieces of this costing X amount of dollars and the perpetual inventory was carried in total of pieces and dollars, not at a 70 per cent basis. The warehouseman's records had nothing to do with the accounting for

(Testimony of Joe N. Baum.)

the way Twin City carried their accounts on [237] their books.

Q. That is exactly what I wanted to know. Now, showing you Plaintiff's Exhibit No. 13, which I understand you prepared from the ledger record of the Twin City Lumber Company——

A. That is correct.

Q. ——you will notice that as of the end of September, there was owed, according to this ledger sheet, owed to Twin City Lumber Company on its warehouse account by Pine Supply \$17,416.05, right? A. That's right.

Q. And that was part of the figure that made up the \$28,000.00 on the note, is that right?

A. That is right.

Q. Now, according to your knowledge, did that figure of \$17,416.05 represent 70 per cent of the invoice price of the lumber then in the warehouse or 100 per cent?

A. Mr. Shapro, that figure—the only definite answer I can give you is that that figure did not represent the cost basis, 100 per cent cost basis, of the inventory in the warehouse.

Q. Then if the cost price was in excess, as you have just testified——

A. I didn't say was in excess, Mr. Shapro. I said that this figure did not represent 100 per cent of the cost price of the inventory in the warehouse at the time. [238]

The Court: Will you explain that answer?

The Witness: Yes, I will, your Honor.

(Testimony of Joe N. Baum.)

One of the troubles—or one of the reasons that the warehouse was closed up, was the fact that the Pine Supply operation was not operating [239] with the terms of the original warehousing agreement whereby only, I think it was \$2,000.00 worth of inventory was to be withdrawn at, I think, during a weekly period, and anything over then that had to be paid for.

As a matter of fact, there were, I would hazard a guess——

Q. Don't guess, please; based upon your information——

A. There was at least \$7,000.00 worth of inventory withdrawn from the warehouse.

Q. By Mr. Elliff?

A. That is right, and invoiced to his customers and not paid for by Mr. Elliff at the time.

Q. Then again, Mr. Baum, your estimate of this morning of the value at cost of the inventory of lumber on hand at the time you and Mr. Ramsey and Mr. Elliff made this, I will call it an inventory for lack of a better term, of \$25,000.00 was based upon one hundred per cent of cost of the merchandise in the warehouse at the time?

A. I am pretty sure that was correct, Mr. Shapro.

Mr. Jacobs: Just a moment. Will you identify the particular item that you are referring to that you and the witness pointed to something?

Mr. Shapro: I am sure I said September 24th and the amount \$17,416.05.



(Testimony of Joe N. Baum.)

What is an aging, do you know what I mean by an aging of the accounts receivable of Pine Supply shown to Mr. Ramsey on this meeting in the latter part of September? [240]

A. I think Mr. Ramsay and Mr. Elliff and I sat down and we aged the receivables right there.

Q. As you went through? A. Yes, sir.

Q. In other words, you went through the receiveable items by item with reference to date?

A. That's right, invoice by invoice.

Q. Now Mr. Baum at any meeting that you had with Mr. Ramsay other than the meeting of September, 1953, did you show him or was there shown to him in your presence any other records or any financial figures referring to the Pine Supply business? A. Not to my knowledge, Mr. Shapro.

The Court: Just a moment. Read that.

(Record read.)

Mr. Shapro: Q. Now Mr. Baum did you at the meeting that you participated in with Mr. Hunter at the Twin City office in San Francisco in August of 1953 show Mr. Hunter any figures, figures of course referring to Twin City financial——

A. As far as I remember, Mr. Shapro, I did not.

Q. Were any figures given to Mr. Ramsey by you or in your presence at the meeting referring to personal indebtedness of Mr. Elliff other than Twin City—other than Pine Supply—I am sorry. [241]

A. Not—I don't think there were.

Q. Were any figures given to Mr. Hunter by you or in your presence at that meeting with ref-

(Testimony of Joe N. Baum.)

erence to assets that Mr. Elliff—other than Pine Supply?      A. I don't think there were.

Q. Did you examine the contents of the envelope that Mr. Elliff left with Mr. Hunter's maid on that Sunday in Beverly Hills immediately before he took it up to the house?      A. No, I did not.

Q. When previously to the time it was delivered to the maid did you last see the contents of that envelope?

A. Well, if I remember, Mr. Shapro, after Mr. Ramsey got finished reading that trust agreement and examining some of the other papers that were in the envelope, I saw Mr. Elliff put the things back in an envelope. The next thing I remember was that Mr.—as far as these papers go: of Mr. Elliff delivering something to the maid down in Beverly Hills.

Q. And that was a difference of between Friday and Sunday?      A. That is right.

Q. Friday night in San Rafael and Sunday morning in Beverly Hills?      A. That is right.

Q. You didn't see it in the interim?

A. I did not.

Q. Would you recognize the letter of [242] transmittal that you have referred to as being taken over to San Rafael?      A. No, I would not.

Q. Who prepared that letter, if you know?

A. I think that letter was prepared by Mr. Pasquinelli.

Q. You are sure you wouldn't recognize it if I showed it to you?

(Testimony of Joe N. Baum.)

A. No, I wouldn't, Mr. Shapro.

Q. When you told the Court this morning then that you were sure—that is the word you used—that in the envelope at the time of its delivery to Mr. Hunter's home there was the financial statement of Mrs. Lannin, the original promissory note, and at least one copy, to paraphrase your words, at least one copy of the trust agreement. You based that entirely upon what you saw in the envelope the Friday preceding the Sunday at which this delivery was made, right?

A. No. Plus the fact that when I went down to Los Angeles with Mr. Elliff he said, "I have these documents and on our way home I want to stop off at Mr. Hunter's home and deliver them."

Q. In other words, your testimony of the certainty of the contents is based upon what Mr. Elliff told you plus what you saw on the preceding Friday?

A. That is right.

Q. Would you recognize the financial statement of Mrs. Lannin if I showed it to you? [243]

A. I never saw the financial statement of Mrs. Lannin.

Q. How do you know it was in the envelope when it was delivered?

A. Because Mr. Elliff told me one of the reasons he had to go down there was to deliver the financial statement to Mr. Hunter.

Q. Mr. Baum, how much more of the testimony you have given today have you given as information of your own knowledge as opposed to that

(Testimony of Joe N. Baum.)

which is based entirely upon what Mr. Elliff told you?

A. The only thing that what might be a question about is what I have just told you now, Mr. Shapro.

Q. You are sure?           A. Yes.

Q. Mr. Baum, you mentioned this morning that there were some checks issued by Mr. Elliff to Twin City Lumber Company which had bounced, to use the colloquialism—other than the three checks that were outstanding and which had bounced and which were included in the \$28,000.00 note, is that right?

A. No—will you repeat that question again, please?

The Court: Were there other checks than the three checks?

The Witness: Yes.

Mr. Shapro: Q. You testified that there were?

A. That is right. [244]

Q. Do you remember when those checks were issued and bounced? I don't mean exactly the dates, approximately.

A. It would be sometime, oh, say, between the middle of August and the beginning of May. That is as close as I can come.

Q. In other words, the beginning of May was the four—

A. No. What I meant was the beginning of the business in May and sometime between then and August.

(Testimony of Joe N. Baum.)

Q. Well, did you have any personal knowledge of that other than after July of 1953?

A. Why, yes. I could go back and examine the checks vouchers that finally cleared through on the financial statement.

Q. You say you could. My question is you did?

A. I did, yes.

Q. Is it your testimony that there were checks issued by Elliff to Twin City Lumber Company prior to July 10th, 1953, which had bounced and ultimately cleared?

A. To the best of my recollection there were, Mr. Shapro.

Q. You don't have any record of those, do you?

A. Well, there was a file on protest notice, in the files that were brought over to my office, and I looked for—I mean in the files that were brought over to my office I looked for a special envelope that I had set up when I was doing Mr. Elliff's work that we used to keep the protest notices in. [245] But I couldn't find it.

Now I could probably go back and go through Mr. Elliff's records and find at least one or two of those checks which I am quite certain were dishonored during that period of time and not the three checks in question.

Q. The only ones I am talking about are checks at the beginning of his business which would be May 20th and about July 10th. Do you recall any between those two dates?

A. Well, all I do know is I recall checks that



(Testimony of Joe N. Baum.)

were dishonored at the bank, Mr. Shapro.

Q. Those checks were all paid ultimately through the bank? A. Yes, I am positive they were.

Q. Now these three checks that bounced toward the end, and the amount of which was included in the \$28,000.00 note, were never paid by the bank?

A. That is right.

Q. As far as you know, was any demand made upon Mr. Elliff for payment of those checks by anybody?

A. Well, I know that there was some discussion. Now I am trying to remember who Mr. Elliff spoke to about the one check in particular, seven thousand two or three hundred dollar check not clearing the bank. Now I don't remember—there was quite a discussion about that one.

Q. Perhaps I didn't make my question clear. I am referring to the time after a period of time, after October 6th, after [246] the issuance of the \$28,000.00 note, to your knowledge was any effort made by anybody to—

A. After October?

Q. —by anybody to collect those checks?

A. Oh, in—not after October 6th.

Q. How long did this meeting at the Bermuda Palms in San Rafael take?

A. Oh, it might have taken an hour more or less, Mr. Shapro.

Q. *What* is your best estimate?

A. Best estimate.

Q. And it was just the three of you?

(Testimony of Joe N. Baum.)

A. Yes.

Q. You, Elliff and Mr. Ramsay. How long did the meeting with Mr. Hunter in August of 1953 in San Francisco take?

A. It might have been an hour, more or less.

Q. That is your best estimate? A. Yes.

Q. How long did the meeting of the end of September in Mr. Elliff's office take?

A. At the one in which he——

Q. In which Mr. Ramsay examined the books?

A. That took several hours, Mr. Shapro.

Q. Would you estimate it for me and also give me the hour of the day?

A. It was in the evening. I don't think we [247] got out of there until about nine or ten o'clock in the evening.

Q. About what time did you start?

A. I'd say we started somewhere around five thirty or six.

Q. It took you somewhere between two and three——

A. Three or four, something like that.

Q. Now getting back again to the meeting in Mr. Pasquinelli's office, which I think you said took place either a day or two after the meeting with Mr. O'Connor, right? A. That's right.

Q. Was the note that had been discussed with Mr. O'Connor discussed with Mr. Pasquinelli at the following meeting?

A. I think the only mention about the note was that we informed Mr. Pasquinelli that we had gone

(Testimony of Joe N. Baum.)

into Mr. O'Connor's office and he had referred—he was going to prepare the note in the amount of \$28,000.00.

Q. He was going to. In other words you told Pasquinelli, you or somebody at the meeting told Pasquinelli, that a day or two previously you had taken up with Mr. O'Connor in preparation of the \$28,000.00 note, is that right? A. That's right.

Q. All right. Now tell me, you testified a few moments ago on direct examination that the trust agreement was made for the protection of Mrs. Lannin, is that right?

A. Well, that was the purpose of it, yes, sir.

Q. To your knowledge at the meeting with Mr. Pasquinelli, [248] was anything said by anyone that the promissory note for \$28,000.00 would not be delivered until the trust agreement was signed?

A. The only thing that I remember about it, as far as that transaction goes, Mr. Shapro, it was my impression that this was all——

Mr. Shapro: Please, if your Honor please, I think I am entitled to an answer to the question as I asked it. If the witness doesn't know he can say so. I don't want his impression.

The Court: The answer so far may go out. Read the question and then answer it, please.

The Witness: May I ask you——

The Court: You just answer it yes or no. Mr. Baum, there are three ways you can answer it, yes, no, or I don't know.

The Witness: I don't know.

Mr. Shapro: Q. Mr. Baum, did Mr. Ramsey at

(Testimony of Joe N. Baum.)

that meeting in Pasquinelli's office say in your presence or hearing that he was there in order to get the note as soon as he could?

A. I don't remember that either, Mr. Shapro.

Q. You wouldn't say he didn't say it, though?

A. I don't remember it.

Q. Did Mr. Pasquinelli make notes at this meeting with you [249] and Mr. Elliff and Mr. Ramsay?

A. Yes, he did.

Q. I mean handwritten notes?

A. That's right.

Q. When did you for the first time see a type-written draft or the agreement itself, the trust agreement?

A. I think it was shown to me a few days after the meeting, Mr. Shapro.

Q. Was that before or after you went to San Rafael?

A. I am not positive, but I think it was before we went to San Rafael.

Q. Was the copy of the trust agreement that you saw the first time signed?

A. No, is was not.

Q. Was it signed in your presence?

A. No, is was not.

Q. By any of the parties to it?

A. No, it was not.

Q. Was the promissory note signed by any of the parties to it in your presence? A. No, sir.

Q. Did you see the original promissory note and read it before it was delivered or shown to Mr. Ramsay in San Rafael?

(Testimony of Joe N. Baum.)

A. No, sir, I don't think I did.

Q. Did you see the original trust agreement signed before [250] it was, as you have testified, shown to Mr. Ramsay in San Rafael?

A. No, I don't think I did.

Q. You spoke a few moments ago, Mr. Baum, of protests, protests of checks. Isn't it a fact that the protesting of checks to which you refer is an item of \$21.00 protest fees on the three checks that were included in the \$28,000.00 note?

A. No, Mr. Shapro. I am fairly certain that we had a separate file which we used to put all letters and communications from the Bank of America to, you know, to Pine Supply.

I am pretty sure there were protest notices other than that in there.

Q. Now you are sure, are you not, Mr. Baum, that included in the total that Mr. Elliff testified to of \$28,116.53, which was the amount of the indebtedness of Elliff to Twin City Lumber Company as of the time the note was given, included an item of \$21.00 for protest fees?      A. That is correct.

Q. And those protest fees were incurred in connection with the three bad checks that you identified, namely, \$2,500.00, \$741.26, \$7,310.98?

A. That is right.

Q. Do you know how the \$116.53 was paid to Twin City?

A. I would have to look for the records [251] to refresh my memory, Mr. Shapro.

Q. Do you have the records there?



(Testimony of Joe N. Baum.)

A. Well, let's see. I have got one of them right here.

The Court: While the witness is looking through the records, have you any estimate as to how long your cross-examination will be?

Mr. Shapro: I think my cross-examination of this witness your Honor, without regard to the production of the additional records, would take possibly fifteen, twenty minutes more at the most. Then, of course, the next order of business I presume will be the cross-examination of Mr. Elliff. That, I am sure, your Honor, will take some time, considerable time.

The Court: I am trying to consult the convenience of this witness. He says he is in from San Jose. Should we try to finish it tonight or——

Mr. Shapro: I doubt that, your Honor. We have to go through the records item by item. If I get the answer to this one question, this happens to be a rather convenient point to drop off. But that of course is up to your Honor.

Mr. Jacobs: Your Honor, there will be, I presume, some cross-examination by Mr. Robert Jacobs and there will be a little redirect.

Mr. Shapro: In that case maybe this is a good time to adjourn.

The Court: If we could finish in fifteen or [252] or twenty minutes I would be perfectly willing to do that, but with the three of you, I doubt it.

Mr. Jacobs: It's very much appreciated, your Honor. I want the Court to know it, and I know I

(Testimony of Joe N. Baum.)

speak for all of us, including the witness, I am sure, but we couldn't possibly finish with him.

The Court: Well, if we can't finish let's discuss this. Do you want this witness to come back tomorrow or do you want to put him on at some future time when he has had an opportunity to look at his records?

Mr. Jacobs: Don't you think it would be best and most conserving of his time, Mr. Shapro, to let him come back after the weekend when he has had an opportunity to compile these records to satisfy your demand.

Mr. Shapro: Certainly.

The Court: What weekend? You mean we are not going to finish this week?

Mr. Shapro: We won't finish tomorrow, your Honor.

Mr. Jacobs: Do you think you could or have you got other plans?

Mr. Shapro: We have jumped the gun, may I say, your Honor. We have jumped the gun. I want to confess that we are trying to talk you into avoiding a Friday hearing, your Honor. In this case, your Honor, it was a left-hand curve.

The Court: I think you should come out in the open and ask for it. [253]

Mr. Shapro: An oblique approach sometimes accomplishes the purpose, your Honor.

The Court: I take it that none of you want to return Friday?

Mr. Shapro: I think we can stipulate to that in this case.

(Testimony of Joe N. Baum.)

Mr. Jacobs: I will say this in favor of the conspiracy and this is that I have been trying this case while I have been recovering from a very bad case of intestinal flu. I would welcome a recess but I wouldn't ask for it for the world because——

The Court: I guess the answer is we don't return Friday, then.

Mr. Shapro: Can we leave it this way, your Honor, with respect to Mr. Baum, that when the next date is set that that will be the time he comes back because we wish to accommodate him on the record.

The Court: Other than tomorrow.

Mr. Shapro: Other than tomorrow, yes.

The Court: Well now, you will ask Mr. Baum to come back at such time as we have agreed to come back after tomorrow?

Mr. Jacobs: Certainly. He will be back here and have the records with him, your Honor, as far [254] as we are able to satisfy that demand. [255]

(Thereupon an adjournment was taken until 10:00 o'clock a.m. of Wednesday, November 23, 1955.)

Wednesday, November 23, 1955

10:00 o'clock a.m.

Mr. C. H. Jacobs: There are four matters, very brief ones, I want to examine Mr. Elliff on. I see I didn't on direct when I closed the examination yesterday.

Mr. Elliff, will you resume the stand, please?

## GEORGE F. ELLIFF

recalled, previously sworn, for

## Further Redirect Examination

Q. (By Mr. C. H. Jacobs): Mr. Elliff, on the occasion when Mr. Ramsey examined the records of the business at San Jose, that was late in September, as I understand—— A. Yes, sir.

Q. Of 1953—did he also examine the merchandise in the warehouse? A. He did.

Q. How long a period of time was spent in his examination of the merchandise in the warehouse?

A. Over the week we were probably in the warehouse four or five times, discussing the inventory and dead items in the inventory at the time.

The Court: What was that last?

A. Dead items.

The Court: What do you mean by that?

A. Stock that hadn't moved in six or eight months. [257]

Q. (By Mr. C. H. Jacobs): Was there any discussion as to whether or not these items were covered by warehouse arrangement?

A. They were covered, yes.

Mr. Shapro: I move to strike the answer of the witness, if the Court please, on the ground it is not responsive to the question.

Mr. C. H. Jacobs: I agree. I don't think the witness understood the question.

The Court: It may go out.

Mr. C. H. Jacobs: I asked him:

Q. Was there any discussion between you and

(Testimony of George F. Elliff.)

Mr. Ramsey, or in your presence, and in Mr. Ramsey's, whether these items in the warehouse were covered by the warehouse arrangement?

A. I don't think there was any doubt in Mr. Ramsey's mind or my mind because there was a complete record of it.

Mr. Shapro: I move to strike the answer of the witness on the ground it is his conclusion.

The Court: It may go out.

The question was: Was there any discussion between you and Mr. Ramsey about it?

Mr. C. H. Jacobs: The witness said he doesn't think it was specifically mentioned.

A. I don't believe it was, no.

Mr. C. H. Jacobs: As I understand it—— [258]

The Court: Well, you spoke of some records.

A. Mr. Ramsey——

The Court: Did these records show on their face these items in the warehouse?

A. Yes, sir, they did.

Q. (By Mr. C. H. Jacobs): Were any of these items not covered by warehouse receipts that had already been issued at the time of Mr. Ramsey's examination? A. You say: Were they?

Q. Were any of them not covered?

A. Not to my recollection, no, sir.

The Court: That is, all items in the warehouse were covered by the warehouse receipts' arrangement?

A. Yes, they were.

Q. (By Mr. C. H. Jacobs): What was the



(Testimony of George F. Elliff.)

method by which the warehouse receipts were issued on the merchandise in the warehouse?

A. When the material was received in the warehouse from the shipper, it was inventoried and—in other words, counted—to see that the correct amount of pieces or footage, whichever the case may be, was correct according to the invoice. Once we had received the invoice, it was typewritten on a non-negotiable receipt and sent to San Francisco.

Q. I see. With what instructions——

The Court: By “San Francisco,” you meant sent to the [259] Douglass people?

A. Douglass Guardian people, yes, sir.

Q. (By Mr. C. H. Jacobs): With what instructions, what were they to do, what did you tell them?

A. I didn’t know the procedure after that, but I presumed it was forwarded then on to Mr. Hunter in Los Angeles.

The Court: Well, who sent the information to San Francisco?

A. The bonded representative.

The Court: Barnhardt?

A. It would be Mr. Barnhardt.

Q. (By Mr. C. H. Jacobs): You mentioned in your previous testimony a check for approximately \$7200.00, I believe that was issued by you, I think you said some time in August.

A. I believe that is correct, yes.

Q. And was not paid on presentation and was protested.

A. It was not paid but was protested.

(Testimony of George F. Elliff.)

Mr. C. H. Jacobs: (To Mr. Shapro) Do you have that check?

Mr. Shapro: Yes, we have the check.

Mr. C. H. Jacobs: There is a notice of protest?

Mr. Shapro: Yes, attached to it.

Mr. C. H. Jacobs: May I have that, also?

(Counsel producing.)

Q. (By Mr. C. H. Jacobs): I show you, Mr. Elliff, a check on [260] the form of Pine Supply Company, drawn on the Hester Branch of the Bank of America, dated September 18, 1953, and in the amount of \$7,310.98.

I show you also a notice of protest, describing this check and signed by B. M. Creighton, Notary Public, Santa Clara, addressed to the Canadian Bank of Commerce, and attached also a protest of Dishonored Instrument, signed by the same notary.

Mr. Shapro: That is addressed to the Bank of America.

Mr. C. H. Jacobs: Yes, addressed to the Bank of America. And attached also to it is another Notice of Protest dated September 27, 1953, signed by the same notary, addressed to the Twin City Lumber Company.

Q. Are those the documents that you just referred to when you said they issued a check which was protested? A. These are, yes.

Mr. C. H. Jacobs: We will offer these as the Trustee's next in order, if your Honor please, all as one exhibit.

The Court: Exhibit 15.

(Testimony of George F. Elliff.)

Mr. C. H. Jacobs: May the record show they were produced from the files of the counsel for Twin City Lumber Company.

(Check in the amount of \$7,310.98 and notice of protest received in evidence and marked Plaintiff's Exhibit 15.)

Mr. C. H. Jacobs: May I also remark, for the record, [261] that the check of course bears no stamp showing payment.

The Court: Showing what?

Mr. Jacobs: Showing payment.

Mr. Shapro: Naturally, it was protested for non-payment.

Mr. C. H. Jacobs: Never had been paid.

Mr. Shapro: That's right.

Q. (By Mr. C. H. Jacobs): Now, Mr. Elliff, after you had issued that check and it had been protested, did you receive any communication from Mr. Hunter? A. I did.

Q. How did that communication come in?

A. To the best of my recollection, it was by phone.

Q. Mr. Hunter called you?

A. He called me, yes, sir.

Q. What, if anything, did he say about this check?

A. Well, he was pretty irate about the fact that it had come back from the bank.

Q. What did he say?

A. Well, he stressed the seriousness of it and his displeasure, and, well, he was——

(Testimony of George F. Elliff.)

Q. Did he say anything about the practice of issuing checks when the funds were not available to pay them?

A. Yes, there was a lot of discussion about this particular check. I mean, it went on for probably a week and when it was going to be made good, if it was going to be made good, [262] what shape the company was in, as far as accounts receivable——

The Court: What's that?

A. What shape the company was in, meaning how we stood on accounts receivable. Why it had been written—I mean, went into a lot of detail on it. Of course, he was protesting all during this time——

Q. (By Mr. C. H. Jacobs): Now, can you approximate the date of that telephone conversation?

A. About the 1st of September, I believe.

Mr. Shapro: The check wasn't protested until September 27, your Honor.

The Court: The check is dated the 18th of September.

Q. (By Mr. C. H. Jacobs): In reference to the protest of the check, how long after that was this telephone conversation?

The Court: Will you look at the dates of it there? (Handing witness.)

(The witness examines.)

The Court: The check is dated the 18th of September. One part of the protest is dated the 27th of September.

(Witness examining.)

(Testimony of George F. Elliff.)

A. Then it must have been prior to Mr. Ramsey that this telephone conversation took place.

Q. (By Mr. C. H. Jacobs): I see. Now, you say there was more than one conversation on this subject?

A. I think there were three in one day, if I remember [263] correctly.

Q. All from Mr. Hunter? A. Yes.

Q. All by telephone? A. Yes.

Q. Passing to another matter, after the October transaction, did you buy any stock in trade from other than Twin City Lumber Company—Twin City Company, I mean?

A. After October 8th?

Q. Yes. A. Yes, I did.

Q. Following that transaction, what percentage of your stock in trade—withdraw that.

You did make a purchase from Twin City Company in November, you said?

A. Yes, I did.

The Court: There were two in November, weren't there?

Mr. Shapro: Three, your Honor. The witness testified to two, but the record shows there were three.

The Court: I only have a record of two.

Mr. Shapro: There were two on November 20th. That is, the exhibit shows it.

Mr. C. H. Jacobs: I think the exhibit indicates there were two in November.

The Court: That's right. I have just two dates.



(Testimony of George F. Elliff.)

Mr. Shapro: The amounts are correct. It's just the number of invoices.

Q. (By Mr. C. H. Jacobs): Well, was it all on one order in these—in November payments, or do you remember?

Mr. Shapro: You mean invoices?

Mr. C. H. Jacobs: Invoices, yes, these November invoices.

A. I would have to refresh my memory on that.

Mr. Shapro: Just to answer your Honor's question, there were two invoices on November 20th, 1953, one for \$3,170.37, one for \$726.83. There was on November 25 an invoice of \$1,646.25.

I think your Honor has two of those, probably. I am reading from Exhibit 4.

The Court: They were paid at different times?

Mr. Shapro: Yes, they were paid at different times. Yes, they were paid in four payments.

The Court: I have it.

Q. (By Mr. C. H. Jacobs): Counsel has just been referring to, Mr. Elliff, these three exhibits in November—I mean these three items in November——

The Court: What is the point of it, counsel? We know what the fact is. Why do we want to labor that? Is there anything you want to show further?

Mr. C. H. Jacobs: I want to show what his percentage of the stock in trade consisted of, purchases from Twin City, [265] and what part consisted of purchases from others subsequent to the October transaction, your Honor.

(Testimony of George F. Elliff.)

The Court: Ask what he bought from other people.

Q. (By Mr. C. H. Jacobs): On the average, Mr. Elliff, following the October transaction, what percentage of your stock in trade consisted of purchases from others than Twin City Company, dollarwise?

A. Two-thirds, I would say, percentage wise.

Q. Percentage wise.

A. Percentage wise, two thirds.

Q. You mean two-thirds in value, in dollar value? A. In dollar value, yes, sir.

Q. Passing to a fourth matter, regarding this \$1200.00 payment that is shown by that exhibit No. 4, as having been made in April, how was that payment made?

A. That was a final payment in closing out the account, which was the last business you are speaking of?

Q. Yes. How was that made: by check?

A. It was made by check, yes.

Q. By check. And was that check cleared on presentation?

A. I believe there was one protest notice on it, but it was the fault of the bank. It was cleared the second time.

Q. It was cleared the second time. And in what month did it clear?

A. It shows here April 22nd they cleared it on their books, [266] so it must have been the latter part of April.

(Testimony of George F. Elliff.)

Mr. Shapro: Do you know when it was cleared yourself?

A. No, I don't, because I never got the statements back from the bank.

Mr. C. H. Jacobs: Do you have that notice?

Mr. Shapro: No, we don't have that check.

Q. (By Mr. C. H. Jacobs): That has never been returned to you from the bank?

A. No, sir. They say it is in the Federal Reserve Bank in San Francisco?

Mr. Shapro: If your Honor please, I am going to object to that on the ground it calls for hearsay.

Mr. C. H. Jacobs: Oh, granted. Granted.

The Court: Why wouldn't the check get back to him if it was paid?

Mr. C. H. Jacobs: Beg pardon, sir?

The Court: Why wouldn't the check get back to him if it was paid?

Mr. Shapro: I don't know.

Mr. C. H. Jacobs: They sometimes retain it, your Honor, if it bears a notice of protest in the clearing house.

The Court: Doesn't it get back to the maker?

Mr. Shapro: Of course it does.

Mr. C. H. Jacobs: It ought to.

Mr. Shapro: May I make the observation, your Honor, [267] that no check that has ever been protested is ever paid on its face by any bank. A new one may be issued, but no check that has ever been protested—I make this statement unqualifiedly—no check that has ever been protested is ever paid on

(Testimony of George F. Elliff.)

its face in the same form. If counsel wants to undertake to prove that, I suggest that he do so, because I don't think that it can be done.

The Court: What happens to it?

Mr. Shapro: A new check has to be issued. The check that is protested is returned to the bank of original deposit and therefore — to the original payee—like we have these three checks have been involved. But where a check—if this check were ever protested, which, as far as I know, was not the fact, this \$1200.00 check, if it was ever protested, it was never paid (this check was paid), that check would, in the normal course, your Honor, go back to the maker in this statement. Now, it may be that the bankrupt never picked up the statements, I don't know.

Mr. C. H. Jacobs: Well, there isn't any——

The Court: Did you ever draw a second check for that?

A. No, sir, but I did receive a protest.

Mr. Shapro: Do you have a copy of the protest on it?

A. It should be in the files of Pine Supply Company.

The Court: The witness stated a moment ago—and that may be the reason for it—that the protest was in error by [268] reason of the bank's error.

A. It was.

The Court: That may be the reason——

Mr. Shapro: The only thing, your Honor, I want to make the observation only that there is no evi-

(Testimony of George F. Elliff.)

dence yet that this check was ever protested, the \$1200.00 check.

The Court: Except the witness' statement.

Mr. Shapro: That's right, the witness' statement only.

The Court: He got a notice of protest.

Mr. Shapro: That's right.

The Court: After all, what difference does it make?

Mr. C. H. Jacobs: It doesn't make very much.

Mr. Shapro: I don't know.

Mr. C. H. Jones: The only object in going into that really and spending the Court's time on it, is that in the amendment to the complaint we alleged that that payment was made on or about May 7th, I believe, and this credit is given in April, and I want to show the two are one and the same.

Now, you may have the witness.

#### Further Recross Examination

Q. (By Mr. Shapro): Mr. Elliff, showing you Plaintiff's Exhibit No. 15, which is the protested \$7300.00 check, will you tell the Court, please, how that check was delivered by you and to whom, when it was first issued?

A. It was delivered Uhrich of the Douglass-Guardian [269] Warehouse Corporation.

Q. This check was delivered, was it not, in payment for merchandise withdrawn from the field warehouse at that time by you?

A. Without a date on it, yes.



(Testimony of George F. Elliff.)

The Court: What's that?

A. Without a date.

Q. (By Mr. Shapro): Without a date on what?

A. On the check.

Q. In other words, it is your testimony that the check, which is now part of Exhibit 15, was issued by you, delivered by you, to Mr. Urich of the Douglass Warehouse Company undated?

A. That is correct.

Q. But it was delivered for merchandise?

A. It was delivered with the instructions to hold it until the date could be put on.

Q. Who gave the instructions for the date to be put on it?           A. No one.

Q. Who was to give the instruction?

A. I was.

Q. When did you get the merchandise out of the warehouse that this check covered, with reference to the date of issue of the check as compared to the date that it bears?

A. It must have been the latter part of August or the first [270] part of September.

The Court: The check was delivered at that time?

A. The check was delivered on or about the 18th, if I remember correctly.

The Court: Of what?           A. Of September.

The Court: Did you say you got the merchandise in August?

A. It was withdrawals from the warehouse that the check was written for.

(Testimony of George F. Elliff.)

The Court: Then you got the merchandise in August before you delivered the check?

A. That's correct, sir.

The Court: Well, was that in accordance with your arrangement with the warehouse?

Mr. Shapro: No, your Honor.

The Court: Mr. Elliff, was that in accordance with the arrangement with the warehouse?

A. We had a lapse of time, it had built up over the \$2,000.00, so it covered more than one week; it must have covered about three weeks.

Q. (By Mr. Shapro): Now, Mr. Elliff, at the time you bought Mr. Hodes out of the Abbott-Lane partnership, which was the latter part of May, as I understand it, 1953, what personal assets did you have? By personal assets I mean other than assets of Pine Supply Company. [271]

The Court: After he bought him out?

Mr. Shapro: At the time, sir.

A. I don't know as I had any.

Q. When did you start building your home?

A. The first house or the second house?

Q. The house that you were occupying in October, 1953.

A. I was in a rented house at that time.

Q. Were you building a house in October?

A. No, sir.

Q. Were you building a house in May?

A. What year?

Q. '53. A. No, sir.

Q. When did you first start to build a house?

(Testimony of George F. Elliff.)

A. February of '54.

Q. February of '54? A. Right, sir.

Q. That is the first time you built a house or undertook to build a house?

A. No, it's the second time.

Q. When was the first time?

A. In September, 1947.

Q. Oh, way back in '47? A. Yes.

Q. All right. Now, did you own in May of 1953 or have [272] any interest in a lot other than the lot you have testified to as being on Mount Hamilton, which you testified was worth approximately \$2500.00?

A. I didn't own it. Mrs. Lannin held the mortgage on it.

Q. Who had title to the lot?

A. I wouldn't rightly know.

Q. How much was Mrs. Lannin's mortgage on this lot?

A. About five times as much as it was worth, about \$10,000.00.

Q. And this is a lot other than the Mount Hamilton lot? A. No. I only had one lot.

Q. My question was: What lot did you have, sir, other than the lot on Mount Hamilton?

A. None.

Q. None. All right. Now, when did you buy the Lincoln automobile? A. In October, '53.

Q. As a matter of fact, you had that Lincoln automobile at the time this note and trust arrangement was made? A. It is possible.

(Testimony of George F. Elliff.)

The Court: What?

A. It is possible.

Mr. Shapro: It is possible, he said.

Q. When did you buy a station wagon?

A. I didn't.

Q. You never had a station wagon? [273]

A. My wife owns one but I don't own one.

Q. When did your wife buy a station wagon?

A. She traded her Ford for a station wagon—I guess in May of '53.

Q. May of '53. You were driving the station wagon at the time this May arrangement with Mr. Hodes was made, weren't you?

A. I could have been, off and on, yes.

Q. Did you pay any part of the purchase price for the station wagon from your earnings or the earnings of the business?

A. I don't remember.

Q. In your direct examination the other day, Mr. Elliff, you testified that you owed Mrs. Lannin, your mother-in-law, \$12,000.00. When did you incur the \$12,000.00 obligation, in whole or in part?

A. Well, beginning with 1947.

Q. Beginning with 1947. How much did you owe Mrs. Lannin at the time of the dissolution of your partnership with Hodes?

A. I couldn't honestly say.

Q. Was it \$12,000.00? A. At that time?

Q. Yes.

A. It could very easily have been, yes.

Q. Did you pay Mrs. Lannin any money be-

(Testimony of George F. Elliff.)

tween—on what you owed her—between May of 1953 and October of 1953? [274]

A. May of 1953 to October?

Q. Yes.

A. No, I don't believe I did, sir.

Q. When you testified the other day on direct examination that you owed Mrs. Lannin \$12,000.00, at what time were you referring to?

A. I would say about in May or June—June, I would say, of '53.

Q. June of '53?

A. It was that amount or above at that time.

Q. That amount or above? A. Yes.

Q. It was all represented by a note or notes, as I understood your testimony? A. Yes, sir.

Q. Was it a note or notes, do you recall?

A. I would say notes.

Q. Notes, plural? A. Plural.

Q. Do you know Mr. Hodes' signature?

A. I have seen it several times, yes, sir.

Q. I show you what purports to be a financial statement of Pine Supply Company on the stationery of the First National Bank of San Jose, purporting to be signed by Mr. Louis Hodes, and ask you whether or not you recognize that as Mr. Hodes' signature. [275]

A. It looks like his signature.

Q. It looks like his signature? A. Yes.

Q. Have you ever seen this document before?

A. Yes, I believe I have.



(Testimony of George F. Elliff.)

Q. You know, do you not, that that statement was sent to the Twin City Lumber Company?

A. I believe I took it myself.

Mr. Shapro: We will offer in evidence at this time, if your Honor please, a financial statement of the Pine Supply Company dated April 7—withdraw that—it is dated March 7, 1953, and purports to indicate the financial condition as of April 7, 1953, of Pine Supply Company.

The Court: Exhibit E.

(Thereupon financial statement Pine Supply Company, received in evidence and marked Defendants' Exhibit No. E.)

Q. (By Mr. Shapro): As I understood your testimony the other day, Mr. Elliff, included in the envelope that you left at Mr. Hunter's home on Sunday morning was the financial statement of Mrs. Lannin, is that right?

A. You know, I couldn't swear that it was in there or wasn't in there. It was handed to me by the manager of the Bank of America and it was a sealed envelope and I enclosed it in the large envelope. So I have no knowledge that it was or wasn't. I presume it was. [276]

Q. Do I understand that you never saw this financial statement?

A. I have never seen it, no, sir.

Q. At no time?           A. At no time.

Q. Then your testimony the other day that the financial statement of Mrs. Lannin was delivered to Mr. Hunter's residence was based entirely upon

(Testimony of George F. Elliff.)

what the Bank of America manager told you was in the envelope, is that correct?

A. Can I elaborate on that a little?

Q. Yes, sure.

A. Mrs. Lannin phoned her bank and asked them to give me her financial statement, that I would be by to pick it up.

I went by and picked it up. I presumed by all—as a matter of fact that it was in the envelope. Therefore, I could safely say that as far as I know, it was there.

Q. In other words, again, the only basis of your statement that it was, is the fact that you were told it was in there; you didn't read it, you didn't see it?

A. I was told by Mr. Hunter it was there later on.

Q. I see.           A. Yes.

Q. Now, do I understand that Mr. Hunter told you that this financial statement was in the envelope that you left at his home on Sunday morning? [277]

A. I asked him what—about Mrs. Lannin's financial statement. He said, "I think it is very satisfactory."

Q. Isn't it a fact, Mr. Elliff, that this financial statement was not given to Mr. Hunter or to the Twin City Lumber Company until at least a week after the warehouse receipts were released?

A. It was given to him on Sunday morning.

Q. Then your testimony is that it was in the

(Testimony of George F. Elliff.)

envelope that you left at his home on Sunday morning?      A. I do.

Q. All right. Now, Mr. Elliff, when you bought Mr. Hodes' interest in the partnership out, you expected to continue and you did continue, the business on your own, did you not?      A. I did, yes.

Q. And you expected to operate profitably, did you not?      A. I had high hopes, yes.

Q. And when, if at all, did you first tell Mr. Ramsey that the Pine Supply Company would not be able to pay its debts to Twin City Lumber Company?      A. I don't remember.

Q. Did you ever tell him that?

A. I don't remember that.

Q. Did you ever tell Mr. Hunter that neither you nor Pine Supply would be able to pay what it owed to Twin City Lumber Company? [278]

A. I don't recall saying it, no, sir.

Q. As a matter of fact, Mr. Elliff, you at all times, right up until after June of 1954, assured Mr. Hunter and Mr. Ramsey that you would be able to pay the bill that was owed to them, isn't that true?      A. I don't believe so, no.

Q. You don't believe so?      A. No.

Q. Now, are you sure?

A. I am certain there were points in there in the lapse in between May and October where it was very *evidence* that I couldn't pay my bills.

Q. It was evident to you, sir. Now, my question——      A. And made evident to them.

Q. How was it made evident to them by you?

(Testimony of George F. Elliff.)

A. Because of the bad checks and because of delinquent payments.

Q. All right. The Court has heard and we will hear more about these bad checks. We understand that. My question, sir, is directed toward your telling Mr. Hunter or Mr. Ramsey that you would not ever be able to pay what you owed to Twin City Lumber Company. A. Ever?

Q. Yes. A. I never said "ever". [279]

Q. You never said "ever"? A. No.

The Court: You never told him that?

A. Ever. There was one occasion when I told him that I couldn't pay him any money until I got my accounts receivable in. I remember that.

Q. (By Mr. Shapro): When was that?

A. But I never said "ever". I was always trying to pay——

Q. You always expected to be able to pay?

A. You bet your life.

Q. I will address myself to another subject. Mr. Elliff, are you sure that by the end of September of 1953 you had not started to build your home?

A. Absolutely.

Q. You are certain? A. Absolutely.

Q. You did not then tell Mr. Ramsey at this meeting in your office, at which the books were examined, that you were building a home?

A. No. That can be substantiated by the loan and the time the permit was taken out.

Q. All I ask is your testimony. A. No.

Q. You said no? A. No. [280]